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Transferring Farm Property Within Families in Iowa

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FOREWORD

An increasing number of Iowa farm-owning parents and their children are searching for satisfactory means of transferring the home farm to the next generation. The manner in which these transfers are carried out will have profound influences upon the welfare of Iowa's farm families and upon the stability of the state's agriculture.

Many factors conditioning the choice of means for transferring farm property within families are economic and social in nature; but the means for effecting the transfers are largely legal. Consequently, Iowa State College and the State University of Iowa College of Law have teamed up to make this analysis of intra-family farm transfers and to outline various methods of transferring farm property. Funds to help carry out the study were provided by the Iowa State College Agricultural Foundation.

This bulletin reports the first of a series of studies on "Economics of Land Law Research" being conducted jointly by the Iowa Agricultural Experiment Station and the Iowa College of Law. These studies are concerned with (1) methods whereby farm people acquire, hold, use, and transfer farm property within the framework of the law and (2) an analysis of advantages and weaknesses of various methods as determined from the actions and experiences of farm people. From these studies should come some of the information needed by Iowa farm people to work out with their lawyers satisfactory solutions to problems of acquiring, using and transferring farm property.

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SUMMARY

Iowa farm families are faced with serious problems of transferring their farm property within the family. Many of these families are searching for a satisfactory method of making the transfer from one generation to the next.

Several reasons may be offered in explaining this increasing interest in transferring farm property within families. These include: (1) increased ownership of farms by operators, (2) larger equities in farms by owners, (3) high estate and inheritance taxes affecting more farm estates, (4) higher income taxes, (5) parents' interests in trying to avoid some of the property transfer mistakes made by their parents and (6) children's desires to know what to expect in the kind and extent of intra-family help.

Farm parents often become confused over what to do in planning for the distribution of their property. This confusion also encompasses possible means for carrying out their objectives and transfer plans. Farm parents may have only one farm which must provide them a living during their remaining years, yet they have several children, some of whom are anxious to start farming. As a result of these conflicting demands, farm parents frequently do nothing in the way of planning for the distribution of farm property. Less than one out of three Iowa farm owners have made wills, and only three out of each hundred have already transferred farm property within their families.

Lack of planning for property transfers within families results in several problems. Children remaining on the home farm may make extensive improvements which are shared with brothers and sisters at the parents' death. Or these children may not improve or even remain on the home farm because of the uncertainties of their future interests in the farm. The remaining parent may not receive enough property to provide a satisfactory income for his or her remaining years. In the process of buying out other heirs, the son or daughter remaining on the home farm may be forced into debt beyond the ability to pay. Expensive and drawn-out estate settlements may result. Excessive taxes may fall upon the heirs, which may necessitate sale of the property. The farm may be divided into uneconomic units. The going concern value of the farm may disintegrate through a dispersal sale to settle the estate. These are examples of problems which can result from lack of planning of transfers within families.

In the absence of a will or other valid property transfer plans at death, state laws specify how the property will be distributed. The law may or may not distribute the property

in line with the owner's wishes. Thus, the owner should be sure he understands what will happen under the law if he fails to make plans.

Within wide limits, farm-owning parents are free to determine how their property will be distributed. Numerous means exist for carrying out their desires. They may transfer it in whole or in part during their lifetimes. They may transfer their property and reserve a life income for themselves. They may make a will specifying how it is to be distributed at their deaths. They may set up trusts for children and/or grandchildren. They may form a corporation. They may make sure their children are treated equitably, which is not always equally. They can save their family much expense by reducing taxes and estate settlement costs. One or any combination of these arrangements or conditions may be achieved, providing the parents take appropriate action.

Transferring Farm Property Within Families in Iowa[1]

By John F. Timmons and John C. O'Byrne[2]

IMPORTANCE OF FARM TRANSFERS WITHIN FAMILIES

One out of every two Iowa farm owners has received family assistance in acquiring farm ownership. These intra-family farm transfers appear to be increasing throughout the state. This trend is in keeping with farm transfer experience in older parts of this country as well as countries in Western Europe from which our farm property system evolved.

Sooner or later farm-owning parents and their children must face the problems of transferring the home farm within the family. These problems arise out of the inevitable processes of life and death and the continuity of rights in farm property. Because of the inevitability of death, farm-owning parents and their children are confronted with the problem of bridging the gap between generations in providing for the transfer of farm property within the family.

Fortunately, an increasing number of farm families are becoming concerned with intra-family farm transfer problems and are searching for satisfactory ways of planning for the transfer of their farm property. There are several reasons for this increased interest. First, more Iowa farmers than ever before now own their farms. Around 62 percent of Iowa's farmers own part or all of the land they operate. Second, Iowa farm owners have larger equities in their farms than ever before. Farm owners' equities in the land they operate are around 88 percent of the value of their land and buildings. Third, more farm estates are being subjected to higher estate, gift and inheritance taxes as a result of high taxes and increased land values. Fourth, increasing income

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[1] Project 1043 of the Iowa Agricultural Experiment Station.

[2] Professor of economics, Iowa State College, and professor of law, State University of Iowa, respectively. The interest and encouragement of the Iowa State Bar Association, particularly that of Mr. Ingalls Swisher of Iowa City (president 1951-52) and Mr. Robert Throckmorton of Des Moines, are gratefully acknowledged. Mr. George C. Murray of Sheldon, practicing attorney and past president of the Iowa State Bar Association, gave generously of his time and experience and made many valuable suggestions which have been incorporated in this bulletin. Mr. H. G. Allen, associate actuary, Bankers Life Company, reviewed the sections on life expectancy and annuities and made valuable suggestions for improving the content and the presentation of data and ideas.

taxes encourage farm owners to consider the tax-saving possibilities of distributing their property within their families. Fifth, today's parents are interested in avoiding some of the errors made by their parents in transferring farm property within their family. Sixth, children are anxious to obtain reasonable assurance of what to expect in the way of family help in planning for their future.

PURPOSE OF REPORT

The purpose of this report is to provide farm people and those who advise them, with information on the problems and possible methods of transferring farm property within families. County extension directors, home economists and vocational agriculture instructors should find this report useful in developing educational programs concerned with transferring farm property within families.

SCOPE AND METHOD OF STUDY

This study is limited to problems and possible ways of transferring farm property within families. The extent and nature of intra-family farm transfers throughout the state was obtained from the farm ownership survey made in 1946 and reported, in part, in Iowa Agricultural Experiment Station Bulletin 361. Information obtained from the ownership survey and the 1950 Census of Agriculture helped indicate some of the problems in transferring farms within families.

The general framework within which alternative methods of transferring farms take place comes from the Iowa law as developed by the courts and legislature. The analysis of property transfer taxes is based upon provisions of the Code of Iowa (1950) as amended through the 54th General Assembly and the federal Internal Revenue Code as amended by the Revenue Act of 1951.

HOW IOWA FARMERS ACQUIRED OWNERSHIP

Family assistance has been an important factor in acquiring farm ownership throughout the state. Four out of every 10 men owners and 7 out of every 10 women owners have experienced some type of family help in acquiring ownership of their farms. (Table 1.) Most women acquired their farm property interests by gift, will or estate settlement. A great many of these are older widows. On the other hand, most of the men, and some of the women, acquired ownership through family purchase or assistance plans. It is reasonable to assume that this represents a younger group.

TABLE 1. HOW IOWA MEN AND WOMEN ACQUIRED OWNERSHIP OF THEIR FARMS.*

Method used in acquiring farm ownership	Men			Women		
	Within families (percent)	Outside families (percent)	All (percent)	Within families (percent)	Outside families (percent)	All (percent)
Purchased from nonrelatives		55.3	55.3		24.2	24.2
Purchased from relatives	12.9		12.9	5.4		5.4
Purchased partly from relatives	4.7		4.7	2.7		2.7
Gift, will, estate settlement	5.5		5.5	47.6		47.6
Homestead, foreclosure and others		2.0	2.0		3.4	3.4
Family assistance combination	18.6		18.6	15.4		15.4
Combinations of no family assistance		1.0	1.0		1.3	1.3
All methods	41.7	58.3	100.0	71.1	28.9	100.0

* Adapted from John F. Timmons and Raleigh Barlowe, Farm ownership in the Midwest, Iowa Agr. Exp. Sta. Res. Bul. 361, 1949, and unpublished data from 1946 farm ownership survey.

The study thus points up the two groups to whom within-family transfers are particularly important—the younger persons starting to build up ownership and the widows for whom provisions must be made for their remaining years.

The term "agricultural ladder" has been used to describe how farmers work their way from their parents' farms or wage laborers through various steps including tenancy to ownership.[3] Iowa farm owners have used numerous ladders or combinations of steps or rungs in achieving ownership of their farms. (Table 2.)

The most frequently used ladder, reported by 27 percent of the owners, started with work on the parents' farm followed by farm labor on other farms, tenancy and then ownership. Slightly fewer owners, 23 percent, used the same rungs plus some nonfarm work.

Altogether, 84 percent of Iowa's farm owners gained farm experience on their parents' farm after their eighteenth birthday. Included are the 58 percent who subsequently acquired ownership through within-family farm transfers. The remaining 26 percent of the owners gaining

[3] See Barlowe, Raleigh R. and Timmons, John F. What has happened to the agricultural ladder? Jour. Farm Econ., Feb., 1950.

experience on parents' farms, although not reporting direct family help, did receive experience and advice from parents prior to or in the process of acquiring farm ownership. Thus, most of Iowa's farm owners have benefited from intra-family help in the form of experience, advice and financial assistance.

TABLE 2. TENURE EXPERIENCES OF IOWA FARM OWNERS IN CLIMBING THE AGRICULTURAL LADDER TO OWNERSHIP.*

Pre-ownership experiences of farm owners	Proportion (percent)
Parents' farms, farm wage laborer, renter	27
Parents' farms, farm wage laborer, nonfarm work, renter	23
Parents' farm, nonfarm work	18
Parents' farm only	11
Farm wage laborer, nonfarm work, renter	7
Nonfarm work only	5
Parents' farm, farm wage laborer, nonfarm work	5
All other combinations	4
All farm owners	100

* Barlowe and Timmons. What has happened to the agricultural ladder? Jour. Farm Econ., Feb., 1950.

PROBLEMS OF TRANSFERRING FARM PROPERTY WITHIN FAMILIES

Although one-half of Iowa's farm owners received at least some direct family help in acquiring ownership, their acquisition processes were not without difficulties, some of which were serious. Also, problems confronting today's farm-owning parents in their attempts to work out satisfactory farm transfers within their families are difficult. Most Iowa parents have only one farm, yet they may have two, three or more children whom they want to treat fairly. How can this be done without breaking up the farm or without leaving the heir remaining on the farm with a heavy mortgage assumed to pay off his brothers and sisters? Most parents would not only like to see their farm stay within their family, but would also like to help their children who want to farm, get started farming at an early age. Yet the parents must depend upon their farm and its income for support during their remaining years since the farm has been their "savings bank" for old age as well as the source of income while raising their family.

FEW OWNERS HAVE WILLS

Faced with these kinds of problems, farm parents frequently are confused as to what can be done, and as a result do nothing about the transfer of their farm property. Or they keep putting off making plans until it is too late. Less than 3 percent of Iowa's farm owners have transferred land to their children, and less than one-third have made

TABLE 3. PROPORTION OF IOWA FARM OWNERS REPORTING WILLS WITHIN VARIOUS AGE GROUPS.*

Years of age	Proportion with wills (percent)
Under 25	5
25-34	14
35-44	26
45-54	30
55-64	41
65 and over	61
All owners	31

* Timmons and Barlowe, op. cit.

out wills covering the disposition of their farm property. (Table 3.)

The proportion of farm owners having made wills varies considerably with age. Very few of the younger owners have made wills, although their need for wills is fully as great as or greater than that of older people because of the importance of protecting the interests of their young wives and small children. For example, only 19 percent of the farm owners under 35 years of age reported having made wills. As might be expected, a larger proportion of older owners have wills. However, in the 45 to 65 age group, where children are in process of taking over operation of the farm, planning has been neglected by about two-thirds of the farm-owning parents and their children.

SIZE OF FAMILY AND NUMBER OF FARMS OWNED

As shown in table 4, two-thirds of Midwest farm women have more than one child. On the other hand, most farm owners in Iowa, as shown in table 5, have only one farm to distribute among their children. The average farm family has 3.2 children and the average family has only one and a fraction farms to give them.

TABLE 4. NUMBER OF LIVE CHILDREN BORN OF RURAL FARM WOMEN AGE 15-49 YEARS IN NORTH CENTRAL STATES, 1940.*

Number of children born	Proportion of women ever married excluding those not reporting
	(percent)
No children	13.9
1 child	20.3
2 children	20.9
3 children	15.2
4 children	10.3
5 children	6.7
6 children	4.6
7 children	2.9
8 children	1.9
9 children	1.3
10 or more children	2.0
Average number	3.2

* Computed from Differential fertility, 1940. Sixteenth Census of the U. S. Gov't. Printing Office, Washington, D. C. 1943. Table 17, P. 53.

TABLE 5. PROPORTION OF FARM OWNERS WHO OWN ONE, TWO, THREE OR FOUR AND FIVE OR MORE FARMS.†

Number of farms owned	Owner operators* (percent)	Operator landlords** (percent)	Non-operator landlords*** (percent)	All owners (percent)
1 farm	93	59	82	85
2 farms	7	32	12	12
3 or 4 farms	[a]	8	6	3
5 or more farms	[a]	1	[a]	[a]
All	100	100	100	100

* Owners who operate all their own land.
** Owners who operate part of their land and rent out the rest.
*** Owners who rent out all their land.
[a] Less than 0.5 percent.
† Timmons and Barlowe, op. cit.

Table 4 shows the proportions of rural farm women having various numbers of children from none to 10 or more, and table 5 shows the proportions of various owner groups with number of farms owned. Available information does not permit the exact comparison of number of children and number of farms owned per family. If parents with several children owned several farms, their farm transfer problems would be simplified considerably. On the other hand, if parents with several children owned only one farm, their problems of transferring the farm within the family might be more difficult. Also, little is known about the extent of other property, savings and investments including life insurance and annuities held by these farm owners. Analysis of these specific interrelationships must await further information. However, it is clear from these studies that the common pattern involves the family with more children than farms, and most often several children to share one farm.

Further insight into the property holdings of Iowa farm owners may be obtained from farm size and economic classes of farms as shown by the 1950 agricultural census. Since farms vary in size from an acre upward and in value of products sold from less than $250 upward, the farm to be transferred may have little value or great value. Small farms in terms of acres and value of products sold present difficult problems to intra-family transfers, particularly if no other property is held by the parents. It becomes difficult for small farms to support two families—the parents and the son's or daughter's family. Also, it becomes difficult to divide small farms among several heirs and maintain units of economic size.

As shown in table 6, 24 percent of Iowa's farms are in the 140- to 179-acre size farm group, the same size group within which the average size of farm falls. About two-fifths of the state's farms fall into smaller size groups, and somewhat less than two-fifths of the farms fall into larger size groups. Although many of the smaller farms (particularly in the less than 30-acre size groups) include part-time and rural residence types of farms, the fact remains that there is too little property in the smaller size groups to support parents and children during early stages of the property transfer process or to split up among several children.

TABLE 6. DISTRIBUTION OF IOWA FARMS BY SIZE GROUPS, 1950.*

Size groups (acres)	Number of farms (number)	Proportion in each group (percent)
Under 3	1,963	1.0
3-9	7,993	3.9
10-29	9,063	4.4
30-49	7,245	3.6
50-69	4,783	2.4
70-99	21,142	10.4
100-139	28,200	13.9
140-179	49,286	24.3
180-219	22,222	10.9
220-259	20,059	9.9
260-499	28,110	13.8
500-999	2,839	1.4
1,000 and over	254	0.1
All	203,159	100.0

* Preliminary reports of U. S. Census of Agriculture for Iowa, 1950.

Based upon value of products sold per farm, as a measure of farm resources, Iowa's farms may be classified into economic classes as shown in table 7. According to this classification, almost 8 percent of Iowa's farms fall into the part-time and residential groups. Another one-third of the farms sold less than $5,000 of products in 1949, the year covered by the 1950 agricultural census. For these farms, the problem of sharing income between parents and children is serious. Only one-fourth of the farms reported value of products sold to be in excess of $10,000.

TABLE 7. ECONOMIC CLASSES OF FARMS IN IOWA CLASSIFIED BY TOTAL VALUE OF PRODUCTS SOLD IN 1949.†

Economic classes	Number of farms (number)	Proportion of total (percent)
Commercial farms		
Class I ($25,000 or more)	7,330	3.6
Class II ($10,000-$24,999)	44,203	21.8
Class III ($5,000-$9,999)	67,866	33.4
Class IV ($2,500-$4,999)	40,605	20.0
Class V ($1,200-$2,499)	19,011	9.3
Class VI ($250-$1,199)	8,702	4.3
Other farms		
Part-time	7,636	3.8
Residential	7,711	3.8
Abnormal	93	*
Total	203,159	100.0

† Adapted from U. S. Census of Agriculture, 1950.
* Less than one-half of 1 percent.

These data help emphasize the problem of transferring limited farm resources within families. One-third of all the commercial farms in the state had less than $5,000 of products sold. Almost two-fifths of all farms were less than 140 acres in size. Parents owning and operating these smaller farms would be likely to experience difficult problems in providing opportunities for their children to start farming on the home farm. Also, in the absence of additional resources, these families would experience serious difficulties in distributing the farms among two or more children.

WOMEN'S INTERESTS IN FARM PROPERTY TRANSFERS

As indicated earlier, over 70 percent of the women farm owners have acquired ownership of farm property from within their families. This demonstrates that women have special interests in within-family farm property transfers. Tables 8 and 9 indicate reasons for these special interests in that women may be expected to outlive their husbands from 4 to 7 years. Reasons for this as shown in these tables are: (1) Women are between 2 and 3 years younger than men at time of marriage and (2) women have a longer life expectancy than men of comparable ages.

For example, a woman who marries at 20 years of age has a remaining life expectancy of 54 years. Her husband of 20 years of age would have a remaining life expectancy of 49 years. But, since the average husband is 2.2 years older

TABLE 8. LIFE EXPECTANCY IN YEARS FROM VARIOUS AGES FOR WHITE MALES AND FEMALES IN THE UNITED STATES, 1949.*

Age	Expected years of life remaining for		Women's excess years of life expectancy over men	Wives excess years of life expectancy over their husbands
	Men	Women		
At birth	65.9	71.5	5.6	—
1	67.1	72.3	5.2	—
5	63.5	68.7	5.2	—
10	58.7	63.9	5.2	—
15	53.9	59.0	5.1	—
20	49.3	54.2	4.9	7.1
25	44.7	49.4	4.7	6.9
30	40.0	44.6	4.6	6.8
35	35.4	39.9	4.5	6.7
40	30.9	35.3	4.4	6.6
45	26.7	30.8	4.1	6.3
50	22.6	26.4	3.8	6.0
55	18.9	22.3	3.4	5.6
60	15.5	18.3	2.8	5.0
65	12.4	14.6	2.2	4.4
70	9.8	11.2	1.4	3.6
75	7.5	8.3	.8	3.0
80	5.4	5.8	.4	2.6
85	3.6	3.7	.1	2.3

* Statistical Bulletin, Vol. 32, No. 11, Metropolitan Life Insurance Co. 1951.

than his wife, he would be 22 years of age at time of marriage and would have a remaining life expectancy of only 47 years, which is 7 years less than his wife. Or, stated another way, the wife could expect to outlive her husband by 7 years. For these reasons, the property owner's wife has special interests in developing satisfactory farm transfer arrangements that will insure her economic security during those years of widowhood, and still provide for their children.

TABLE 9. MEDIAN AGE AT FIRST MARRIAGE OF MEN AND WOMEN IN IOWA.*

	Age at first marriage (years)		Years women are younger than men at marriage
	Men	Women	
Years	24.1	21.9	2.2

* Computed from U. S. Population Census. Special report series P-45 No.7, May 28, 1945. Age at first marriage.

WHAT HAPPENS WITHOUT PLANNING

Here are examples of problems which arise in families where parents do nothing about planning for the transfer of their farms, or if they put it off until it is too late. First, the son or daughter remaining on the home farm may make expensive improvements on the farm in anticipation of owning the farm some day. Yet the value of these improvements may have to be shared with other brothers and sisters according to state laws if parents make no provision for protecting the child on the farm for investments made.

About 27 percent of all tenants in the state are related to their landlords, most of whom are their fathers or mothers. (Table 10.) Many of these related tenants are operating farms under "father and son" arrangements which may be highly satisfactory. But what would happen if the father were to die suddenly? A father and son arrangement is only an operating agreement. Unless it is built upon foundations of sound ownership transfer, the best father and son arrangement may fall into serious difficulties upon death of the parents.

TABLE 10. LANDLORDS RENTING LAND TO SONS OR SONS-IN-LAW.†

Kind of landlord	Proportion related (percent)
Operator landlords*	19
Non-operator landlords**	30
All landlords	27

† Timmons and Barlowe, op. cit.
* Farm owners who operate part of their land and rent out the rest.
** Farm owners who rent out all the land they own.

Second, in the process of buying out other heirs, the sons or daughters left on the home farm may be forced into debt beyond their ability to pay off. Current high land prices make this problem particularly serious. Third, lack of planning can lead to expensive and drawn-out estate settlements and heavy estate and inheritance taxes which will materially reduce the value of property going to the family.

Fourth, in the process of settling an unplanned estate, the "going concern" farm may disintegrate through a dispersal sale and pass out of the family. Fifth, the son or daughter staying on the farm may not go ahead with plans or improvements essential to good farming because of the uncertainty of what may eventually happen to the farm.

FARM TRANSFER OBJECTIVES AND CHOICES

DETERMINING OBJECTIVES

The first step in planning for the descent of farm property within families is to determine the specific objectives to be accomplished. These objectives may include one or more of the following: (1) provide sufficient income for the parents during the rest of their lives, (2) treat all children fairly, (3) help one or more of the children start farming, (4) keep the farm within the family, (5) maintain continuity in farming operations between generations without dispersing the herds, flocks, land and improvements built up over a lifetime, (6) reward certain children for special favors or contributions to parents' welfare or to improvement of the farm, (7) indicate to prospective heirs what to expect early in life so they can plan their lives accordingly, (8) minimize estate settlement costs, and (9) minimize all taxes to the family, including gift, inheritance, estate, capital gains and income taxes.

Obviously, all these objectives may not be achieved equally well in any particular situation. Equal treatment of all children may result in inequitable treatment of the child who has contributed most to the parents and to their farm. If the farm is left to one of five children who must mortgage it to pay off equal shares to his four brothers and sisters, the farm may pass out of the family through excessive debts beyond the ability of the heir on the farm to amortize. Furthermore, in a period of high prices the heir on the farm, fearful of a decline in values, may be unwilling to buy out his brothers and sisters unless special arrangements are made.

These conflicting objectives, or the problems of deciding just what to do and how to do it, may cause parents to defer plans until it is too late. This consequence is reflected in the small proportion of parents who have made plans for distributing their property.

In the process of deciding upon specific objectives, it may become necessary to accept a little less of certain objectives in return for a little more of all the others. This means compromise among competitive objectives in the interest of working out an acceptable set of objectives from which farm property transfer plans may be developed.

POSSIBLE CHOICES

Farm parents have three major choices in distributing property within their family. These choices are: (1) planning transfers by wills, effective at death, (2) planning transfers effective prior to death, such as gifts and sales and (3) doing nothing and letting the state laws of descent distribute their property after death.

In the absence of sound plans worked out by the parents, their property will be distributed at their deaths according to a rigid formula of law which often may not be in accord with their wishes or with the family situation. Thus, it is well to become familiar with the law of descent. With but few exceptions, parents can take action to arrange for the distribution of their property as they wish. In taking such action, they may provide for the distribution of their property by the use of wills to take effect only at death. Or they may distribute their property during their lifetime through gifts or sale-type transfers. A good plan will often involve a combination of transfers during life and transfers at death.

Choice of method is necessarily influenced by a number of factors. These include objectives to be achieved, number and kind of heirs, amounts of land and other property, and economic position of parents. Various methods of transferring farm property by lifetime transactions and at death by will or the laws of descent are suggested later in this bulletin. Some of the ways for accomplishing the farm owner's objectives in the light of his particular family and economic situation are also suggested.

Before alternatives of intra-family transfers are considered, attention must be given to the nature of farm property and the things that may happen to this property upon the death of the owner.

UNDERSTANDING THE NATURE OF FARM PROPERTY

The nature of the rights that people have in farm property often determines what may or may not be done in transferring the property. For purposes of analyzing kinds of farm property transfers within families, farm property may be divided into two kinds, real property and personal property.

REAL PROPERTY

Real property consists of land and whatever is erected or growing upon or affixed to it. Thus, a piece of property other than land, such as a building or fence, may become real property by being attached to the land. Examples of items generally considered as part of the land are buildings, central heating systems in the buildings, water and electric systems, tile drains and fences. Certain exceptions are made to permit tenants to remove some attached items at the end of a lease, but otherwise attached things become part of the land. Real property is sometimes spoken of as "realty" or "real estate".[4]

TYPES OF INTERESTS IN REAL PROPERTY

The term "property" implies ownership. The period of ownership of real property extends indefinitely into the future. The various periods of time during which rights in land are held by a particular individual are termed "estates." Thus, if property is transferred at the death of the husband to his wife for her life, the wife has an "estate" in the property for her life, or a "life estate." At her death, her period of ownership has been used up. The estate which a person owns in the property is established by the wording of the deed, will or statute which transfers the property from one person to another.[5]

Fee Simple. The most complete estate or ownership of property that an individual can hold is the "fee simple" which allows exclusive use (except as limited by general public policy) and the sole right to dispose of it. This estate is created generally by the words "to John Jones and his heirs" or "to John Jones in fee simple" in the deed or other instrument of transfer.[6] In theory, John Jones has all of the rights in the property forever, and if it is not otherwise disposed of, it would descend at his death to his heirs, then to their heirs, and so on. This is the common form of outright ownership.[7]

Fee Simple Determinable. This estate in land could extend indefinitely like a fee simple, but the deed or instrument of transfer includes a condition which might end the period of time of its existence—for example, a transfer of land "to the independent school district, its successors and assigns, for so long as the premises are used for school purposes." The property would come back to the person who made the transfer (or his heirs, if he were dead) if the school

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[4] Tiffany, Herbert Thorndike. The modern law of real property. Callaghan and Co., Chicago, 1940, §§1-3, §§416-431.

[5] Ibid. §§54-56; §222.

[6] Code of Iowa (1950) §557.2.

[7] Tiffany, op. cit., §§32-42.

district ever ceased to use the property for school purposes. The school district would own an estate known as "fee simple determinable."[8]

Fee Simple Conditional. This estate is pretty much an Iowa peculiarity. It has a long and strange history, but in effect it amounts to a transfer upon condition that the recipient have a child. The estate would be created by a transfer "to John Jones and the heirs of his body." If John has a child at the time, or later has one, he takes an outright fee simple estate. If John never has any children, he is regarded as having only an estate for his life, and at his death the property would go back to the person who made the transfer. This kind of transfer is seldom used.[9]

Life Estate. An estate for life is created when the owner in fee simple of a piece of land conveys the land to another person "for life." The life of some person is used to determine how long the rights in the property shall last. Usually, the measuring life is that of the person to whom the land is transferred. For example, "to John Jones for his life" which means that John can use the property until he dies. Sometimes, the life of another person is used to measure the duration of the estate. For example, "to John Jones for the life of Mary Smith" which means that John can use the property as long as Mary lives. This is called "an estate for the life of another." The person who owns a life estate or an estate for the life of another is called a "life tenant." The life tenant is restricted in what he may do with the property. He has possession for life and all the ordinary uses and profits of the land. He may sell or convey his interest, but cannot transfer more than he owns. He must also remember that someone else has an interest in the property after the life estate is over and so he must preserve the property and not commit waste, that is, substantial destruction or permanent damage to the property. [10] The original owner who transferred the property may place restrictions upon its use by the life tenant. It is also possible for an owner in fee simple to retain a life estate for himself, and to convey only the interest that follows the life estate (and begins at his death) to some other person. That would be called a "reserved life estate."[11]

Remainders. A "remainder" is an estate that will take effect in possession and be enjoyed at some future time after a present estate runs out. The person who owns such an estate is a "remainderman." Actually, the remainderman gets his ownership of the remainder at the time of transfer,

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[8] Tiffany, op. cit., §§156-159.
[9] Ibid. §§131-153.
[10] Code of Iowa (1950) §§658.1-658.6.
[11] Tiffany, op. cit., §§54-66.

even though he has no right to possession or physical use of the property until the previous estate ends. He can sell or mortgage or will his remainder interest even though the right to use the property is postponed.[12]

If Bill Adams, who owned property in fee simple, transferred a life estate to John Jones, and the rest of the ownership to Mary Smith, Mary would have a "remainder." Mary has the estate that remains after John's life estate is used up. Usually, the remainder includes all of the interest left—in fee simple—but it could be a lesser estate, and there could be more than one remainder. Suppose a deed transferred property to John Jones for his life, then to Mary Smith for her life, then to Bill Adams in fee simple. John has a present "life estate." Mary has a "remainder for life," but must wait until John dies to be able to use the property. Bill has a "remainder in fee simple," but he has to wait until both John and Mary die before he can have the use and possession of the property.

Remainders can be "contingent" or "vested." Assume, as in the above example, that the owner of property in fee simple transfers a life estate to John Jones and transfers all the rest of the interests in the property—the remainder—to Mary Smith. Mary has a "vested" remainder since she is the person to take possession when the life estate terminates. Even if Mary died before John's life estate ended, Mary's rights in the property would pass to her heirs, or to the people named in her will, and those persons would take possession of the property when John died. But, suppose the person making the transfer had said that the remainderman Mary must be alive at the death of life tenant John or she got nothing. Then it would be a "contingent remainder." The fact that Mary must survive John creates a contingency which must materialize before the property becomes vested in Mary. If Mary died before John, Mary would get nothing and she would have nothing to leave to her heirs. A remainder might be created for grandchildren who are not yet born. This, too, is "contingent," because a grandchild must be born before there will be anyone available to take the remainder interest. Remainders are "vested" if a known and living remainderman has nothing to do but wait till the previous estate runs out. A remainder is "contingent" if the remainderman is unknown or some condition must be met other than the mere expiration of the prior estate.[13]

Reversion. Where the only interests transferred are those of limited duration, the original owner still has the balance of the original estate. This is called a "reversion." For example, Bill Adams, owner of land in fee simple, trans-

[12] Code of Iowa (1950) §§557.6-557.9.

[13] Tiffany, op. cit. §§219-242.

fers the land "to John Jones for life." John has a life estate, Bill has a reversion. It is called a reversion because the right to use the property "reverts" or comes back to Bill when John dies. Practically, a reversion is the same interest as a remainder, but it has a different name where it is held by the original owner instead of being transferred to someone else.[14]

Future Interests. Any interest that takes effect in ownership or in possession at some future time is termed a "future interest".[15] Remainders and reversions are the most common and best known future interests, but several others can be used in specific situations to achieve particular goals or plans. For example, there are possibilities of reverter, rights of entry and varying types of executory interests.[16] Because of their involved nature and limited usefulness, these additional types of future interests are not discussed further.

Estate for Years. A transfer of property for a definite period of time is an estate for years or a tenancy for years. As commonly known, this is a lease or rental of property for a fixed period of time. Even though the lease is for a single year, or a month, it is called an "estate for years." The lessee or tenant owns the right of use and possession for the term of the lease, and the lessor or landlord retains the underlying ownership of the land. The interest of the landlord while the lease is in effect is his "reversion." This interest in land can be created to take effect at death by will as well as created to take effect during life.[17]

Powers Over Property. A person may have a power to dispose of property which he does not own. A power of appointment is an authority conferred by one person upon another to select or nominate the person or persons who shall receive a particular estate. Such a power could also be retained by the original owner of property after he had transferred it. A power may be as broad or as narrow as the creator of the power desires. The holder of the power will usually have an estate in the land ahead of the estate over which he has the power, but he may have no connection with the property.

Such a power could be used in combination with a life estate and a remainder. For example, Bill Adams could transfer property to John Jones for his life, giving John a power to appoint the remainder of the property among John's

[14] Tiffany, op. cit., §§201-204.
[15] Code of Iowa (1950) §§557.6-7.
[16] Tiffany, op. cit. §§247-265.
[17] Ibid. §§67-119.

children in such shares as John desired, and providing that if John did not exercise the power, the remainder interest after his death would go to Mary Smith. In this situation, John would be able to decide at any time during his life to direct that the remainder be transferred to one or more of his children, or by not exercising his power he could let the remainder go to Mary. Bill Adams could have made John's power unlimited so that John could appoint anyone including himself. Bill could also have specified whether John could exercise the power during John's life, or only by will at his death.[18]

It is also possible to give to some person, or to retain for oneself, other types of powers over property. There are many such powers that can be created. A common power of this type is a power to sell. For example, Bill Adams' will leaves a farm to his wife, Sarah, for her life, remainder to Bill, Jr., and gives Sarah the power to sell the farm and dispose of the money as she deems proper. Normally, if she does not sell, the farm will go to young Bill at her death. The power could be limited so that she could use it only under certain conditions.

CO-OWNERSHIP OF REAL PROPERTY

Co-ownership means that two or more persons share the ownership of the same piece of property at the same time. Persons can be co-owners of estates of limited duration, for example, a life estate or a lease, as well as co-owners of estates in fee simple. Co-ownership is a broad, general concept. There are two common types of co-ownership of property. Co-owners may hold property "in common"—as tenants-in-common—or "jointly"—as joint tenants.[19] The rights and obligations of the co-owners will be determined by the type of co-ownership arrangement that has been used.

Tenants-in-Common. Suppose John and Mary purchase a piece of land from Bill, and take title to such land as tenants-in-common. A deed from Bill to "John and Mary and their heirs" will create a tenancy-in-common. John and Mary each own undivided shares of the whole property. This means that neither John nor Mary owns a particular portion or a separate piece of that land, but rather, each is entitled to joint use and possession of the whole property. Either can sell or mortgage his undivided interest. When a tenant-in-common dies, his undivided share passes to his heirs or under his will. Should John desire to obtain a divided share or a separate portion of the land, he may do so by reaching an agreement with Mary, his co-owner, and exchanging deeds covering the specific portions of the land. If no agreement can

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[18] Ibid. Chap. 10.
[19] Ibid. Chap. 7.

be reached, a court action to partition the land can be brought, and then the court will divide the land, or sell the land and divide the money.[20] Any number of persons can be tenants-in-common of a single piece of property. The undivided shares need not be equal, but may vary in size or amount.[21]

Joint Tenants. Suppose John and Mary purchase a tract of land from Bill and by the deed take such land "as joint tenants, with right of survivorship, and not as tenants-in-common." These are the standard words used to create a joint tenancy in Iowa. Both John and Mary have an undivided interest in the whole property, but the joint tenancy differs from a tenancy-in-common in that if Mary dies, John, the surviving joint tenant, becomes sole owner of the property and nothing passes to Mary's heirs or under her will. This is what is termed the "right of survivorship." So, too, if John died first, Mary would own the whole property and John's heirs would get nothing. The survivorship feature can be destroyed. John and Mary together can convert the joint tenancy into a tenancy-in-common. Also, if John transfers his undivided share to Sam, the survivorship feature is lost. Then Mary and Sam would become tenants-in-common of the whole property. John and Mary may also agree to divide the property and exchange deeds to specific portions. If they cannot agree, either may bring an action for partition and the court will either divide the land between them or sell the land and divide the money.[22] This, too, will destroy the right of survivorship. Any number of persons can be joint tenants of a single piece of property, and if the right of survivorship is not destroyed, the last survivor will own the whole property. The undivided shares in a joint tenancy are usually equal in size or amount.[23]

PERSONAL PROPERTY

In the broadest sense, "personal property" or "personalty" includes everything that can be owned and which is not land or real property. Personal property includes (a) movable, tangible things—for example, machinery, books, jewels, harvested crops, livestock, etc., and (b) intangible things—for example, rights to money, debts, stocks, bonds, claims, etc.[24] Several interests, one following the other in time, can exist in personal property in much the same way as in real property. However, it is less commonly done (except in trusts of stocks and bonds), and may lead to diffi-

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[20] Code of Iowa (1950) Chap. 651.
[21] Tiffany, op. cit. §§285-288.
[22] Code of Iowa (1950) Chap. 651.
[23] Tiffany, op. cit., §§281-284.
[24] Brown, Ray A., Law of personal property. Callaghan and Co., Chicago, (1936).

culties because personal property such as farm machinery does not have the permanence of real property and is generally used up in relatively short periods of time. The common forms of ownership are either outright or under a lease for a fixed period.

Co-ownership of personal property is similar to co-ownership of real property. The most common forms of personal property held in co-ownership are joint bank accounts and joint savings bonds, although it is possible to have a joint tenancy or tenancy-in-common in any kind of personal property. Problems arise in determining whether personal property owned by two or more persons is held by them as tenants-in-common or as joint tenants. The method of holding property determines whether or not, on the death of one owner, the other owners take all the property to the exclusion of the spouse and heirs of the decedent.

Real property transfers must be in writing, but personal property arrangements can be made orally. As a result, arguments over personal property often arise after the death of one of the owners. It is important to decide how personal property is to be owned, and to make sure that the arrangement is properly put in writing. In some cases, this arises automatically. For example, the wording of savings bonds and joint bank accounts establishes the rights of the owners. In any dealings with property, the rights desired should be carefully considered and then properly established.

The rights of ownership in property, particularly real property, form the base for sound planning of farm transfers that will achieve the desired objectives. The laws governing property rights are important to the protection of the farm owner, heirs and the public.

Though the law regulating the creation and transfer of property interests, and the results that will flow from each kind of estate or interest, are generally well established, the legal structure is complex. The material in this section offers a general description of the nature of the law, without considering the details of the problems involved.

Considerable legal skill is required to determine exactly the interest or estate that will produce results best suited to a particular farm family arrangement. That is one of the lawyer's important functions.

HOW ESTATES ARE SETTLED AT DEATH

Before considering who ultimately takes the property after death, it is well to consider what happens to the farm owner's property immediately after his death. With this in mind, it is easier to understand some of the points that must be considered in a satisfactory intra-family farm transfer plan.

At a person's death, he leaves what is called his "estate" —that is, all of his property, debts owed to him, and debts and obligations due to others.[25] The person who manages and settles the estate is the "personal representative." Where the decedent leaves a will, the personal representative is called an executor.[26] If no will is left, he is called an administrator.[27] When a person dies, his personal property passes to the personal representative to be used to pay debts and expenses. His real property passes to his spouse and heirs, or to the beneficiaries under a will, subject, however, to being reclaimed by the personal representative, if needed to pay debts.

The estate is probated in the district court of the county of which the deceased person was a resident.[28] The function of the court is to determine that the person is dead, establish the will if there is one, see that the debts and taxes are paid, and fix the rights of the persons who are to receive the property of the decedent.

It is important that the rights of these people be established once and for all, so that no question will later arise concerning their claims to the property. Thus, the court proceeding is designed to fix rights and settle claims, not only among the heirs or takers under a will, but generally against everybody. The procedure provides an opportunity for persons having claims against the decedent to come forward and be paid. It determines the just debts and taxes that are due, and, finally, decides how much is left for distribution.

If the decedent leaves a will, the court determines if the will was properly made and executed. An opportunity is given potential beneficiaries to object to the will if it is thought to be invalid. If the court finds the will valid, the words of the will determine who is to receive the decedent's property. If the decedent leaves no will, then the court determines the persons who are to receive the property in accordance with the statutory distribution scheme.[29]

Probate procedures can be relatively simple when there is no objection to the will or to claims of creditors, since the Iowa Code permits the clerk of the court to make appointments, fix bonds, examine inventories and accounts,

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[25] Here the word "estate" is used in a broader sense (than in the previous section) to mean the sum total of assets and liabilities left behind.

[26] Or "executrix" if a woman.

[27] Or "administratrix" if a woman.

[28] The word "probate" comes from the Latin word meaning "proof." Originally probate referred only to wills but it has now come to mean the process of settling an estate. In fact, when the district court handles these matters, it is called the probate court.

[29] Code of Iowa (1950) Chap. 636.

accept proof of wills, and issue the necessary orders to expedite the proceedings.[30] Of course, if anyone objects to the will, then the whole matter must come before the court.[31] Anyone objecting to an action of the clerk may have it reviewed by the judge.[32] The clerk also keeps all of the probate records. [33] The final approval of the actions of the executor or administrator is of course given by the judge of the court.[34]

Why probate a will? The beneficiaries cannot establish their rights without it. A will can be established only in the probate proceeding. A probated will can be shown in any court as the basis of rights to property, but an unprobated will has no legal standing.[35] The person who is to receive personal property cannot assert his right until after probate because the title does not pass to him except through an executor under a probated will.[36] So, too, one entitled to real property under a will cannot prove his right to the land except by probating the will. Until a will is probated, technically the title to real property is considered to be in the heirs-at-law of the decedent, and not in the persons named in the will.

In the absence of a will, probate or some form of administration of the estate is highly desirable, and generally necessary. In a few instances administration can be avoided. The law sets up the administration procedure to insure rights of creditors and proper distribution to spouse and heirs. If a decedent leaves no will, his personal property passes to a court-appointed administrator[37] to pay debts and taxes, and to distribute the remaining property to the proper persons.[38] The real property passes to the spouse and heirs directly, but it can be claimed by the administrator to pay decedent's debts, if necessary.[39]

It is true that if it is clear who the spouse and heirs are, if the property left is money or tangible personal property, and if there are no creditors, an informal distribution can be made. However, unless it is certain that claims of creditors have been paid, that no taxes are owed, and that the persons who say they are the spouse and heirs are the only ones entitled to share in the estate, a buyer of the property could not be sure that the title was clear. Further, a person who

[30] Ibid. §632.1.
[31] Ibid. §632.2.
[32] Ibid. §632.3.
[33] Ibid. §632.11.
[34] Ibid. §638.33-4.
[35] Ibid. §633.38.
[36] Even in the case of exempt property, which is set aside for the spouse, the proceeding provides the necessary inventory and appraisement. Code of Iowa (1950) §635.7.
[37] Code of Iowa (1950) §633.39.
[38] Ibid. §636.1.
[39] Ibid. §635.23. Spouse's share may not be subject to debts. See next section.

owes money to the decedent might be afraid to pay the heirs without administration because he runs the risk of a creditor of the decedent opening the estate and compelling him to pay again. Failure to administer the estate will seriously affect the title to real property, at least for several years,[40] and a careful buyer will regard the title as unmarketable.

Sometimes, a joint tenancy is used in an effort to avoid probate or administration. Whether this will be accomplished depends on the nature and size of the estate involved. For example, where real property is involved, the prospective purchaser from the surviving joint tenant will demand, among other things, proof of death of the other tenant, and assurance that there is no inheritance tax due to Iowa or estate tax due to the United States.[41] These are the things that proper probate would reveal anyhow.

Such subterfuges as the secret box and the hidden deed are unsound since they usually lead to lawsuits and fail to accomplish their purpose.

PROCEDURE WHEN DECEDENT LEAVES A WILL

After death, someone must start the proceedings by offering the will for probate.[42] Usually this will be the executor, the person named in the will to take charge of the estate.[43] Any other interested person may start the proceedings.[44] It is done by filing a written petition in the court. In fact, the person who has the custody of the will is responsible for filing it with the clerk of the court after the decedent dies, and there are penalties for failing to do so.[45]

Proving the Will. The court sets a day at which time the will is to be "proved."[46] A notice is published so that everyone may be aware that the proving of the will is to take place.[47] Since wills are witnessed by at least two persons,[48] the usual way of proving the will is to call in the witnesses. If the witnesses are dead or absent, there are other ways to prove a will.[49] If there are objections to the validity of the will, they may be made at this time and a trial may be held to determine if the will is valid.[50] After the will is proved, it is recorded in the clerk's office and the executor is given an official copy.[51]

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[40] Iowa State Bar Association, Iowa land title examination standards. (1950) p. 47.
[41] Ibid. p. 22.
[42] Iowa Official Form 177, Revised.
[43] In Re Estate of Livingston, 179 Iowa 183 (1917).
[44] Atkinson, Thomas E., Law of wills and intestate distribution, West Publishing Co., St. Paul. 1937.
[45] Code of Iowa (1950) §633.17.
[46] Ibid. §633.18.
[47] Ibid. §633.20.
[48] Ibid. §633.7.
[49] Ibid. §633.21-2.
[50] Ibid. §633.19.
[51] Ibid. §633.24.

Executor. When the will is admitted to probate, the executor is officially appointed. The decedent nominates the executor in the will and the court usually appoints him. If no one is nominated in the will, or the named person refuses the job or is not qualified,[52] the court will appoint a person, who is then called an "administrator with the will annexed."[53] Almost anyone can be chosen as executor, so long as he or she is a resident of Iowa, of sound mind, and 18 years old.[54] The executor files a bond to guarantee the faithful performance of his duties in handling the estate, and takes an oath to faithfully carry out his duties.[55] The testator can relieve the executor of the duty of filing a bond by saying so in his will. After the executor is sworn and bonded, he receives a letter from the court which gives him the authority to act for the estate.[56]

PROCEDURE WHEN DECEDENT LEAVES NO WILL

Where the decedent dies intestate, that is, without a will, the procedure is very similar. The surviving spouse, the next-of-kin, creditors, or certain other persons may apply to the court for the appointment of an administrator to take charge of the decedent's property.[57] The administrator, like the executor, must take an oath and give a bond for the faithful performance of his duty as the personal representative or custodian of the estate. He too receives an official letter from the court which authorizes him to act for the estate.

SETTLING THE ESTATE

After the appointment of the executor or administrator, the procedure is about the same whether there is a will or no will. A notice of appointment is published to inform all persons interested that there is an administrator or executor to deal with.[58] The executor or administrator collects and takes possession of all of the property owned by or belonging to the decedent at the time of his death even to the extent of suing to recover money or property due the estate.

Inventory. The first important job is to file with the court a complete and detailed inventory of all the property owned by the decedent at his death, and a report naming the surviving spouse, if any, and all of the beneficiaries if there is a will, or all of the heirs if there is no will. The inventory includes all of the decedent's real estate, all of his

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52 Ibid. §633.12, 29-31.
53 Ibid. §633.30.
54 Ibid. §633.27-28.
55 Ibid. §633.43.
56 Ibid. §633.45.
57 Ibid. §633.39.
58 Ibid. §633.46.

personal property which can be used to pay his creditors, and all of his personal property which the creditors cannot reach (exempt property). The personal property would include notes, mortgages, stocks, bonds, accounts receivable, machinery, livestock, jewelry, household goods, and everything else that he owned other than land.[59] An appraisal is made and a dollar value is established for each item of property.[60] If the court thinks that there is someone who has additional property of the decedent, such person can be called into court and questioned under oath.[61]

Although some property cannot be used to pay debts, it is included in the inventory—e.g., property exempt from execution under the law,[62] certain insurance proceeds,[63] and in some cases, damages received in connection with decedent's death.[64] Property held in joint tenancy and certain property transferred before death are also included in the inventory for inheritance tax purposes.

Estate Manager. The executor or administrator is the manager of the estate until it is settled. He stands in the shoes of the decedent, but he also represents the creditors of the decedent and the persons who will receive the decedent's property, and has certain responsiblities to them. His job is to pay off all debts and taxes, and preserve as much of the property as possible for the spouse and heirs or beneficiaries. If the court thinks it advisable and advantageous, it can authorize the executor or administrator to operate the decedent's farm or business for awhile.[65]

Debts, Expenses and Taxes. Thus, the primary job of the executor or administrator is to collect and preserve all of the assets of the decedent. After setting apart to the widow the exempt property,[66] he pays the expenses of the last illness, funeral expenses, any allowance made by the court to the widow and minor children during the settlement of the estate, and taxes.[67] Then he is ready to pay off the general debts of the decedent.[68]

One of the reasons for the notice and publicity of probate proceedings is to inform all creditors to come and present their claims. These claims are presented to the clerk of the court,[69] and the executor or administrator has an opportunity to allow the claim or to object to it.[70] If there is a dispute,

[59] Ibid. §635.1.
[60] Ibid. §635.5.
[61] Ibid. §635.14.
[62] Ibid §635.1.
[63] Ibid. §635.8.
[64] Ibid. §635.9.
[65] Ibid. §635.52.
[66] Ibid §635.7.
[67] Ibid. §635.65-6.
[68] Ibid. §635.66 (3).
[69] Ibid. §635.54.
[70] Ibid. §635.57.

a court hearing is held to settle it, or it can be submitted to a jury.[71] If claims are not filed within 6 months after the notice is given, they will usually be barred and cannot be collected at all.[72]

The executor or administrator pays these obligations first from money collected and then from money obtained by selling personal property. If necessary, the court will order real property sold to pay debts.[73]

Distribution of Estate. When all debts, claims and taxes have been paid, the executor or administrator may then distribute the property to the spouse and heirs or beneficiaries.[74] Actually, earlier distributions may be made if creditors of the estate are protected.[75] If there is no will, the administrator distributes the remaining property to the people named in the Iowa statute, as explained in the next section of this bulletin. If there is a will, the executor distributes the property to the persons named in the will. Generally, the actual property is distributed if that can be done, otherwise it is sold and the money is distributed.

Final Report and Discharge. The executor or administrator makes regular reports to the court on the progress of settling the estate. The first report is due within 7 months after his appointment.[76] When he is ready to make the final distribution, the executor or administrator makes a final report to the court showing what property came into his hands, and what he did with it, including payment of debts and taxes.[77] At this time, any interested person may object to the final settlement of his accounts. If the report is approved, distribution is made, the estate is closed, and the executor or administrator is released from his responsibilities.[78]

The duty of the executor or administrator is important to the estate, and he undertakes great responsibility. Since he really acts for the decedent, great care should be taken in his selection and in the selection of the attorney with whom he must work.

LETTING THE LAW TRANSFER FARM PROPERTY

When a person dies without making a will he is considered in law as having died intestate, and the property owned at the time of death is distributed among his spouse and heirs-at-law according to a fixed plan set out in the provisions of the Iowa statutes. The statutory provisions control the method of distribution, unless there is a will.

[71] Ibid. §635.59.
[72] Ibid. §635.68.
[73] Ibid. §635.23.
[74] Ibid. §635.73-5, 636.2-4.
[75] Ibid. §636.3.
[76] Ibid. §638.2.
[77] Ibid. §638.34.
[78] Ibid. §638.12.

WHAT PROPERTY IS INCLUDED

All real estate within the state of Iowa is subject to the Iowa laws of distribution regardless of the owner's residence. Real property outside of Iowa owned by an Iowa resident will be distributed according to the laws of the state where the land is located. These laws may be different from the laws of Iowa. All personal property, wherever it may be, is subject to the Iowa laws of distribution if the deceased was a resident of Iowa.

Personal property and real property located in Iowa are distributed under the same rules.[79] However, as far as possible, the debts of the deceased and expenses of administration of his estate are paid first from cash on hand and the proceeds from the sale of personal property. Thus, the real property is left intact for distribution if possible. The actual property is distributed if it can be done fairly. Every effort is made to avoid the necessity of selling an intestate's property and distributing the proceeds.

WHO RECEIVES THE PROPERTY

Iowa law determines the persons who take property and the amount that each shall take according to a fixed scheme. In general, the law sets up an order of precedence—spouse, children, parents, and then other relatives. (Table 11.) The statute is phrased in terms of the persons who are living at the death of the intestate. Thus, it is necessary to determine what relatives are living and then determine from the law how much of the property each receives.

Property or money given by an intestate during his life to a person who is entitled to a share in the estate under the statutory distribution scheme is regarded as an "advancement," an advance payment on his inheritance. In distributing the estate the advancement is charged as part of his share. If his share is less than the advancement, no return is required. If the giver did not mean the gift to be considered as an advance share, it is up to the recipient to furnish proof. Otherwise, it will be assumed by the court that the gift is an advancement.[80]

Wife or Husband and Children Surviving. Upon the death of either husband or wife the surviving spouse is entitled to one-third of the value of all real property which the deceased owned at any time during the marriage. (Table 11.) This is the so-called "dower" interest. Normally this will be one-third of the real property owned at death, but it is possible for the spouse to have a dower interest in land transferred

[79] Code of Iowa (1950) §636.1.
[80] Ibid. §636.44. This does not apply when a will is made.

TABLE 11. DESCENT AND DISTRIBUTION OF PROPERTY IN THE ABSENCE OF A WILL.*

Surviving spouse		No surviving spouse	
Descendants	No descendants	Descendants	No descendants
1. One-third of all property goes to the surviving spouse.** (636.1,5)	1. $15,000 plus one-half of the remaining property to the spouse. (636.32)	1. Children take all, sharing equally. Share of a dead child to his heirs. (636.31)	1. Whole estate to parents, or to surviving parent. (636.32) (636.39)
2. Remaining two-thirds passes to the children in equal shares. Share of a dead child to his heirs. (636.31)	2. The other one-half to the parents, or to the surviving parent. (636.32) (636.39)		2. Same as No. 3 under Surviving Spouse, No Descendants.
	3. If both parents are dead they will be presumed to live long enough to take property, and it goes to their descendents. If no descendants, to the ascending ancestors (of the parents) and their issue. (636.40)		3. If no heirs are thus found, property goes to heirs of the deceased spouse or spouses, if decedent had survived prior marriages). (636.41)
	4. If no heirs are thus found, all property goes to the spouse, or divided between the surviving spouse and the heirs of any deceased spouse. (631.41)		4. If no heirs are thus found and if the intestate is an adopted child, the estate will then pass to his natural parents. (636.43)
			5. In the absence of the special case listed supra, the property will, if heirs are not found under step 3, escheat to the state of Iowa. (636 50)

* Code of Iowa (1950). Numbers in parenthesis refer to code sections. For further elaboration, see Appendix A.

** This could be more than one-third of the net. Dower is not subject to debts. Share may also include dower interests in property sold before death.

by the deceased during his life. In that case, additional property of the estate will be used to make up the share. However, real property sold during the marriage upon a court order or property in which the surviving spouse relinquished dower rights (e. g., by signing the deed) is not included in computing the one-third share in the real property. The spouse takes this share of real property outright in fee simple, and it cannot be sold to pay the deceased's debts or the expenses of administering his estate.[81]

The surviving spouse may include the homestead in the one-third share of realty.[82] The exact lands that the spouse is to receive are determined by agreement, or by order of the court.[83] If the realty is of such a nature that it cannot be physically divided so as to provide for the dower and other shares, then it will be sold and one-third of the proceeds paid to the surviving spouse,[84] unless all the interested parties agree upon a system of use or sharing of the land involved.[85] In lieu of the dower interest of one-third of the real property in fee simple, the surviving spouse may elect to take a life estate in the homestead. [86]

The surviving spouse is also entitled to one-third of all personal property left by the deceased that is not needed to pay debts and expenses.

The real and personal property remaining after setting off the shares of the surviving spouse and payment of debts and expenses goes to the children of the deceased in equal shares. If a child is dead, his share goes to his children or other heirs.[87]

Husband or Wife Surviving, but No Children. When a husband or wife dies intestate leaving a surviving spouse but no children, the surviving spouse receives $15,000 (or the whole of the estate if the estate comes to less than $15,000) after payment of debts and expenses. Of the estate in excess of $15,000, if any, the surviving spouse receives one-half.[88] The spouse's share is free from the deceased's creditors only insofar as it includes "dower" (one-third in value of real property owned during marriage).

The parents of the deceased receive the other half of the estate above $15,000.[89] If one parent is dead, the other parent takes the whole half.[90] If both parents are dead their share goes to their heirs as set out below. If no heirs can be found, this half share of the property is given to the surviving spouse of the decedent or divided between the surviving spouse and the heirs of any deceased spouse.[91]

Children Surviving, but No Husband or Wife. If a person dies leaving children and no spouse, the property

[81] Code of Iowa (1950) §636.5.
[82] Ibid. §636.7.
[83] Ibid. §636.9.
[84] Ibid. §636.16.
[85] Ibid. §636.20.
[86] Ibid. §636.27.
[87] Ibid. §636.31.
[88] Ibid. §636.32.
[89] Ibid. §636.32.
[90] Ibid. §636.39.
[91] Ibid. §636.41.

descends to the children in equal shares. If any of the children are dead, then their shares go to their children or other heirs.[92]

Relatives Surviving but No Wife, Husband or Children. When no spouse or descendants are left, all the property goes to the parents of the deceased in equal shares.[93] If only one parent is alive, then all goes to the one parent.[94]

If both parents are dead, the property will go to the intestate's brothers or sisters in equal shares.[95] If any of the brothers or sisters are dead, the share of that brother or sister will go to his or her children.[96] If there are no brothers or sisters of the intestate, or if they died without leaving children, then the property goes to the brothers and sisters of the intestate's parents (intestate's uncles and aunts), or if they are dead, then to their children (intestate's cousins).[97] The theory behind the method of distribution is this—the property owned by an intestate who dies without leaving a spouse or children is divided among his direct ancestors, and then distributed to the persons who are the living descendants of those ancestors. Thus, in the first instance, his property would be distributed as if his mother and father each owned half of his estate. Each half would go to their respective descendants, their children and grandchildren (intestate's brothers, sisters, nieces and nephews). If none of these were alive, the property would be distributed as if his four grandparents each owned one quarter of his estate. Tracing their descendants would lead to the intestate's uncles, aunts and cousins. If no heirs were thus found, his property would be distributed as if his eight great-grandparents each owned one-eighth of his estate, and so on. If no heirs are thus found, the share goes to the heirs of the intestate's deceased spouse (or spouses), determined according to the same theory.

No Surviving Relatives. If no heirs are found the property "escheats" to the State of Iowa. That is, the state takes the property, sells it, and uses the proceeds for school purposes.[98]

DISADVANTAGE OF THE LAWS OF DESCENT

The statutory scheme of distributing property is rigid and inflexible. It is not based upon the desires of the particu-

[92] Ibid. 636.31.
[93] Ibid. §636.32.
[94] Ibid. §636.39.
[95] Ibid. §636.40.
[96] Ibid. §636.31.
[97] Ibid. §636.40.
[98] Ibid. §636.50-3.

lar individual. Everyone has particular desires about the distribution of his property on death. Differences in desires arise from personal objectives, kind and extent of property holdings and family composition. Thus, the statutory scheme is seldom the best plan—it just fills the gap when someone fails to make property transfer plans before he dies.

Often the statutory scheme results in consequences in complete conflict with the decedent's desires. For example, a husband died without a will, leaving a wife but no children or close relatives. He may have expected that his wife would receive everything that he left. Under the statute, however, one-half of everything over $15,000 was distributed up through his ancestors and down to their descendants. That property went to relatives he never even knew existed, instead of to his own widow. Sometimes the statutory scheme adds additional and unnecessary costs and inconveniences. For example, a man died leaving a wife and several young children. He may have expected that all his property would go to his wife, who would use it for herself and the children. Not so. Under the statute, she received one-third. The other two-thirds belonged to the children, but because they were minors, a legal guardianship had to be set up until they became of age. A guardian had to be appointed by the court to manage the property, and court authority had to be obtained every time that there was occasion to deal with the property, or spend any of the children's money.

A factor often overlooked by the young person who thinks that he or she has no need for a will is the possibility of inheritance. For example, a widower with substantial property had one son, and no other close relatives. The son and his wife lived on the father's farm and had no resources of their own. The father's will left the farm to the son, but the son never bothered to make a will. The father and son were in an automobile accident; the father died in the crash and the son died on the way to the hospital. What happened to the property? It passed to the son by the father's will. Then the property was transferred by the intestate laws. The son's wife received only part of the farm under the state law of distribution. Half of everything over $15,000 went to a distant cousin, and the farm had to be sold to pay his share.

Sometimes, insurance is the factor that is ignored. A young man married while he was in the service and brought his wife to his parents' farm. Having no immediate family of her own, she developed great affection for her husband's family. They were young, had no children, and thought that they did not need wills. He was called back into the service, and on his first leave she went to meet him. An accident occurred; he was killed and she died later of injuries sustained. She was the beneficiary of his $15,000 insurance policy. On her death the right to the $15,000 passed to her remote blood relatives whom she had never seen. Close ties of love and affection bound her to her husband's family, but only her blood relatives were entitled to the money.

The statutory scheme outlined in this section applies in every case in which a person dies without a will. Even though the person had known what he wanted, and even though he told people about his desires, the statutory scheme cannot be changed. Only by a will can a person make his own laws of descent.

TRANSFERRING FARM PROPERTY BY WILL

WHAT IS A WILL

A will is a written document in which a person states what he desires to be done with his property after his death. Any person of full age and sound mind can make a will.[99] The primary purpose in making a will is to dispose of property at death in just the way the owner wants. By making a will, a person can decide for himself who shall receive his property, how much of it, how they shall own it, and to some extent, what they can do with it. A will has no effect during the lifetime of the person who makes it. Only upon his death does the document become effective to carry out the desires and plans that he expressed.

A person who makes a will is called a "testator," and one who dies leaving a will disposing of his property is said to have died "testate." In the previous section, it was said that a person who dies without a will dies "intestate."

RESTRICTIONS ON DISPOSITION BY WILL

The law is remarkably free of restrictions on a person's right to dispose of his property by will. Only a few restrictions exist. The most important limitation prevents a person from depriving a surviving spouse of a share of property. If a will gives a spouse less than he or she would get if there was no will, the spouse may reject the will and take the share that the law would give.[100] The will would control as far as other persons are concerned.

This freedom of disposition, the power to make a plan during life that will be carried out after death, can be enjoyed only by making a will. If a person dies without making a will, the law disposes of his property according to a rigid scheme over which he has no control.[101] By making a will,

[99] Code of Iowa (1950) §633.1.
[100] Ibid. §636.21.
[101] As explained in previous section.

he actually makes the "laws" by which his property is managed and distributed and controlled after his death.

WHO SHOULD MAKE A WILL

Almost everyone should have a will. For a few people the statutory scheme may work out, but most people have thoughts and desires about their property after death that the statutory scheme does not consider. Some people feel that wills are only for old and wealthy persons. Nothing could be farther from the truth.

Size of Estate. Any property constitutes an estate, and provision should be made for it. Usually, with smaller estates it is very important to avoid the statutory scheme because it will chop the property into small units. If the amount of the available property is small, even greater care should be taken to provide for a spouse and children by sound planning. As the estate becomes larger, a will becomes important to conserve the property and transfer it with the least possible loss at death. Too, the owner of property in this case must determine by his will the most efficient division of the property. Anyone farming in these days—whether he is a large or small operator—has more than enough property to make a will necessary.

Age of Testator. Age is no factor at all. The young person runs risks as does the older person. The only difference is that the probability of natural death increases with age. The things that each wants done after death will be different, but each should use a will to set out his desires. Both old and young can do great harm to their families by failure to plan for the distribution of their property in the event of death. Because the older person usually has more property, the difficulties that result from his failure to plan are often more apparent. On the other hand, lack of farm transfer planning may leave the young husband's wife and children many problems which might otherwise be avoided.

Family Circumstances. This is the most important thing to consider in deciding to make a will. If provisions and plans are to be made for particular members of the family, or for particular family situations, a will must be used.

HOW TO MAKE A WILL

1. *List all the property owned* — Land, personal effects, bonds, machinery, insurance, etc., and all property that may be inherited from someone else.

2. *List all persons to be provided for* — Wife, hus-

band, farming son, other children, grandchildren, relatives, friends, church, charities, etc.

3. *Decide in a general way what should be done* — For example, consider the farm. Should it be kept intact? Who will take over? What provision should be made for children who have left the farm? What provision must be made for a wife or husband? What will the wife's needs be? Is there an aged parent or sick or crippled child to be provided for? There may be a family heirloom promised to the oldest daughter, or some bonds that are to go to a son. Perhaps land should go to certain persons to be owned by them together. All the ideas should be carefully thought out and conclusions put down in writing.

This preliminary list will then show what is owned, what the general objectives are, and the specific things the owner would like to have happen. Then decide who will be asked to carry out the directions of the will. This is the person to be named executor of the will—the person who will "execute" the plan after the death of the property owner. The executor is a most important person. Not only will he serve as the property manager, but it may be necessary to have someone to guide or advise the surviving spouse and children. Thus, the executor may also be the family counselor. He should be carefully selected.

4. *Have will properly prepared* — The law is very particular about the formalities of making a will. It is strictly designed to safeguard in every way possible against mistakes or misunderstandings or possible frauds that might occur after death. The law makes a person use great care in making gifts by will. As a result, when a good will is made, it is based upon a sound plan and shows exactly what the owner wants.

The conclusions reached with respect to these various problems should be taken to a lawyer and discussed with him in detail. To produce a good will, the lawyer must have all the facts about the property, its value, its future possibilities; about the family, their relationships, their abilities, their needs; about the owner's hopes and desires and plans. He is setting up a plan to be carried out after death, and if the best possible job is to be done, he must have complete information. A good plan is a careful plan based upon full knowledge.

FORMALITIES OF MAKING A WILL

After the will has been drawn, the attorney will have the will signed by the testator in the presence of two or three persons who are witnesses to the fact that the farm owner signed this particular paper as his will. Each of these persons will also sign a statement at the end of the will, stating that they were present and saw the testator sign the will.[102] In choosing witnesses it is wise to select younger persons who are not mentioned in the will, who live in the neighborhood, and who should still be around when the time comes for the will to be used to dispose of the property. This provides witnesses who will be available after the death of the testator to prove to the court that this document was a will.

CHANGING A WILL

A person often wants to make changes in his will. It might happen that one of the persons mentioned in the will has died; or that some of the property specifically transferred by a will has been sold; or that Congress or the Iowa legislature has made changes in the tax laws that require changes in the will. If a child is born or adopted after the will is made, and no mention or provision is made in the will, the child takes a share of the property as if no will existed.[103] Such an occurrence could easily upset a plan, and a will should be modified after the birth of each child to establish his place in the family plan.

There are certain ways that a will can be changed; the law is strict on this also.[104] It is not sufficient to draw a mark through a paragraph, or write the word "omit" across it. Such marks or writings that would seem to change the will, do not. Writing extra words or lines on a will does not accomplish desired changes either. There are many cases where a person thought he had legally changed his will but was mistaken and the property could not be disposed of as he wished. If changes are to be made in a will, it should be done by a lawyer. He will add a proper "codicil," a simple addition to a will. If substantial changes are to be made, usually a new will should be written. In any event, a will should be reviewed every year or so, or after each change in the family or in the family fortunes, to be sure that the plans are always up to date.

SAFEGUARDING A WILL

Once a will is made, it should be carefully preserved. The lawyer or some other responsible person should have an unsigned copy. The original signed copy should be put in a safe place. It is wise to tell someone in the family, or the executor named in the will, where the will is kept, so that there will be no problem of a "lost" will. A will may also be

[102] Code of Iowa (1950) §633.7.
[103] Ibid. §633.13.
[104] Ibid. §633.10.

filed in the office of the clerk of the district court in the county, sealed so that no one can read it. Iowa law requires the clerk to file it and preserve it until the maker dies or until he wants it back.[105]

By making a good will, well thought out and carefully prepared, a person may be sure that his wishes as to his property will be carried out after his death. It is common sense to take advantage of this opportunity.

TRANSFERRING FARM PROPERTY BEFORE DEATH

If it were possible to transfer farm property to the younger generation at a time early in their lives, the greatest over-all benefit might well be obtained. The farm could be transferred as an effective operating unit. The young owners would have the advice and counsel of the older generation. They would have the knowledge of their ownership and the desire to expend their enthusiasm and vigor in developing the property. Transfer of ownership of land to the young is hindered by two factors relative to the older members of the family. The first is of an emotional or psychological nature—reluctance to part with wordly goods, the desire to hold on to the things acquired. The second, and more important, factor is based upon economic considerations. In many cases the farm represents not only the source of present-day livelihood, but also the savings that will be needed to provide for the parents in their later years.

FAMILY SITUATION

Any sound consideration of a transfer of part or all of the ownership of a farm during life must be based upon the total amount of property owned by the parents and the needs of the parents in their later years, as well as upon interests of prospective heirs. Three hypothetical situations will show the nature of the problem.

1. If the parents own a small farm which will barely support them, and if they have no other resources, it is impossible for the parents to give up the farm, and virtually impossible to make the farm support an additional family at a decent standard of living. No lifetime transfers should be considered.

2. If a family owns several farms or has other resources which will support more than one family, a lifetime transfer of one or more of the farms to the children may be wise. This is sometimes called "premature inheritance." The family itself must recognize that the gift of income-producing property will cut down the income available to the parents.

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[105] Code of Iowa (1950) §633.11.

If the parents are along in years and their responsibilities and obligations have lessened, a reduced income would not be burdensome. Taxes on such a gift made during life will be relatively low—usually much lower than if the property was taxed at death. The combined income tax for the family will be less, thus resulting in a greater family income after taxes.

3. By far the most common situation is this—the parents are unwilling or unable to part with their farm property unless they are assured of some return from it, or some substitute for the income that the farm would have produced. The reasons for this will vary. In most cases the reasons are economic. The parents may not be able to get along without some of the farm income. Or they may be unwilling to cut their standard of living. Or they may feel that they can get along on other income now, but fear that conditions may change and that income from the farm to be transferred might be needed in the future. Other reasons sometimes appear. A father who acquired his property the "hard way" thinks the son should work for his. Or the parents may simply be opposed to making outright gifts to children. There are many reasons for the reluctance to part with the property. These parents must seek a plan in keeping with their desires and circumstances.

Thus, the question asked by many farm parents is this—"If an outright gift cannot be made, are there methods whereby the children can obtain some ownership or interest in the property during the lives of the parents, at the same time guaranteeing some income or return to the parents?" As pointed out above, if the total family property can support only the father, mother and the minor children living at home, no lifetime transfer is possible. Therefore, the remaining discussion assumes that the property owned can be made to support the parents and the family of the son who remains on the farm.

TYPES OF LIFETIME TRANSACTIONS

There are four general ways in which a lifetime transfer may be used to accomplish the desired results:

1. A gift, outright and complete.
2. A gift with certain restrictions attached.
3. A commercial transaction by which the parents obtain some return from the property transferred, for example, annuities to parents, deed and mortgage, or a long-term sales contract.
4. Some combination of the above—for example, part sale and part gift or sale at a reduced price.

Outright Gift. A gift is easily made. Land is given by a written document called a deed, which is properly signed, acknowledged and delivered. Personal property can be given by actually turning over or handing over the property, though here, too, a written deed of gift should be used. The important thing about a gift is its conclusiveness, its finality. Once an outright gift has been made, the giver or donor has no further right or interest in the property and he cannot get it back.[106]

Gift With Restrictions Attached. This is often called a "gift on condition." It can be arranged so that certain conditions must be met or certain things happen before the gift becomes entirely effective. Or the arrangement could be worked out so that the gift is effective at once, but upon certain conditions it will become ineffective and the property will return to the giver. Many logical conditions that fit into the family picture come to mind at once. The danger in this is the tendency to hold on too tightly and to set up unreasonable, illogical or impractical conditions that limit or bind the prospective recipient and defeat the real purpose of the transfer. The conditional gift will not save taxes as a rule.

Commercial Transaction. The obvious commercial transaction between parent and child would be the sale. Any form of transfer for consideration will amount to a sale of one sort or another. The important aspects of such a transaction are the terms and conditions of sale. In the family situation, great flexibility can be achieved by carefully adjusting the terms to the needs of the family, the productivity of the farm, and to the ultimate plan of distribution. Of course, the particular terms of the sale contract should protect the parent's interest in the property if the son or other heir involved is unable to carry out the agreement.

Combination of Commercial Transaction and Gift. This should be the most successful and adaptable method. To the extent that parents are able or willing to make a gift, they can do so. The remainder of the plan would be worked out in terms of a sale or other productive device. Such a plan achieves two primary planning goals—to make the young farmer an owner without an overburdening debt and to provide some return to the parents.

One of the important things to consider in planning the distribution of farm property is the possibility of transferring farm ownership during the parents' life. Properly done, it can achieve the purpose of getting ownership to the young farmer and may at the same time provide for income to parents or others, as need be, and minimize taxes for the entire family.

A plan which involves a lifetime transfer will also involve some transfers at death. So, too, the lifetime plan will often be so constituted that it is not completed before death, but continues with reference to the surviving parent, or

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[106] See result at death if the gift is regarded as an "advancement," when the donor dies without a will, p. 171.

other children, or heirs. Thus, two aspects of a good plan would be tied together—part accomplished during life, and part accomplished by will after death.

Many legal forms and techniques are available to reach these desired results. Because many of them can be used during life, or by will, or in combination—depending upon the plans and desires of the farm owner—they will be discussed in the next section.

TOOLS FOR PLANNING THE DISTRIBUTION OF FARM PROPERTY WITHIN THE FAMILY

Some of the devices which are available to farm owners in planning the distribution of their farm property are discussed below. It will readily appear that most of these planning tools can be used during life, or by will at death, or in a plan that begins with lifetime transactions but is completed only after death.

The primary purpose of each device is to get the land transferred as a unit to one or more persons and at the same time produce money for certain other persons. Thus, it is possible to use these ideas to accomplish various desires. For example, one of these devices could be the heart of a plan to:

1. Transfer a farm to an only son during the parents' lives, and provide the parents an income while they live;
2. Transfer a farm to one son during the parents' lives, and provide income for other children;
3. Transfer a farm to a son at one parent's death, provide an income for the surviving parent, and then produce an inheritance for other children;
4. Transfer a farm to a son at the death of the last parent and provide a money inheritance for other children.

The possibilities are numerous. The first job is to determine exactly what results are to be reached now and after death. Then, examine the tools to see how those results can be accomplished. The legal and tax problems of these devices are too detailed to be discussed in this bulletin. No suggestion should be applied to a particular situation without a careful examination of the property and the family situation by a competent legal and tax advisor. To adopt any plan without such examination and advice may very well lose the benefits sought.

SALE OF PROPERTY

One of the simplest ways to transfer ownership and obtain a money return from the land is a sale. If there is money available, full payment could be made at once. If the parents need the money now, the son could mortgage the farm. If he could not provide a necessary down payment, the parents could take a second mortgage. However, some special treatment would normally be desired in a family situation. This can be worked out in a variety of ways. The parents may be willing to receive the money for the farm in installments over a long period of time, rather than demanding quick payment. Too, since the close relationship is a factor, the price may very well be somewhat lower than in a sale to an outsider.

Thus, a sale arrangement could be worked out with a fair, but not inflated, price with payments to be made over a period of time, at a low interest rate or no interest at all. Great variation is possible here. If the future earnings of the farm are uncertain, the periodic payments could be based upon a percentage of income rather than a fixed sum, or a combination of these. If the son will need money to get started, and the parents have some other income, the installment payments could be low in the beginning, becoming greater as the son prospers and increases the productivity of the land. At all times the parents would retain their claim to the farm if the payments were not made. Such a transaction would be based upon a contract of sale or a deed and mortgage. In either case the parents would have a legal right to take the property back if the payments were not made.

The persons to receive the money payments could be other children instead of the parents, which would result in a gift of the money to those children. If the plan had already been set up for the parents, the parents' rights to the payments could be given during life to other children, or left to them by will. Or such a plan could be set up entirely in a will, to become effective at death to provide money payments for a surviving wife or children. The method of payment, the amount to be paid, and the rights of the wife or other heirs in case of default would be included in the will just as it would be included in a sale contract. The farming son would have the opportunity to accept or reject the offer as made in the will, or the transfer by will to the son could be conditioned upon his acceptance of the terms of payment.

If, at a later date, the persons entitled to receive installment payments needed money, the installment contract could be used as security for a loan or might be sold for a lump sum at its discounted value.

SALE AND GIFT COMBINED

The sale method can be effectively combined with the gift, by selling enough of the property to afford an income and giving the rest. If this was done, all of the property could be mortgaged to secure the payments due on the sale. In fact, if the property was "sold" to a son at a very low price, the transaction would be regarded as a gift to the extent of the value of the farm above the price.

This too is flexible. For example, by selling the property to one son for two-thirds its value, and having him pay the money to two other children, all three children have received relatively equal gifts without dividing the farm. Similarly, such a transaction could be worked out by will to achieve a gift to the son and, through his payments, a bequest to the wife or other children.

If such a plan is used, it is extremely important to have all of the agreement in writing in careful detail. Only in this way can the parties be sure that there will be no misunderstandings during the long period of time that the plan will be in operation. If the parents should die, or if the plan is set up by will, a carefully drawn instrument prepared by an expert outside the family will prevent arguments between the farming son and other children or heirs.

LIFE ESTATE

Another method of insuring that a son or other child will receive the farm in the future and at the same time retaining its use for the parents is based upon a life estate. If property was purchased from a third party, the title could be taken as a life estate in the parents, with a remainder in the son. If the farm is owned by the parents, they could transfer the farm to the son and reserve for themselves a life estate or life use. By this method the son actually owns an interest in the land, but the right to use the land belongs to the parents until they die. The son owns an outright interest, which he can sell or mortgage, but does not have the right of use or possession until the parents die. This plan entails no death tax savings. Even though the son owns his remainder interest in the farm, the property will be subject to estate and inheritance taxes at the death of the transferor.

A family arrangement based upon this plan might also contemplate a lease of the farm to the son during the parents' lives. In this way the son could farm the land for the parents and himself during the lives of the parents, and be assured that the land would be his at their deaths. It might also be used by will to provide a life income for the wife, with the son as tenant during her life. Generally, the life estate would not be used to provide for other heirs, unless combined with some other device, although it could be used to provide income for an incapacitated child.

Every so often someone attempts to achieve the result of the retained life estate by preparing a deed transferring the farm to the son and then leaving the deed in a desk, lock box or safety deposit box to be found after death. This is fraught with danger and often leads to a lawsuit to determine whether a transfer was really made. It is not much better to give the deed to a third person to hold (the so-called "deed in escrow") unless it is certain that the parents cannot recover the deed from the third person.

JOINT TENANCY

Another device for transferring an interest in a farm to a son while retaining an interest for the parents is the joint tenancy. Joint tenancy is a means of holding title to land among several persons in such a way that each owns an equal share while alive, but on the death of each one his share goes to the other owners, and the last survivor gets the whole property. However, each joint tenant has a right at any time to break up the arrangement, destroy the right of survivorship, and take his proportionate share of the property outright.

It would be possible for a father to place his farm in a joint tenancy including father, mother and son. His hope would be that the farm would be operated as a unit while they all lived, and at the death of the parents the son would own the whole farm. But, if the son died first, he would have no interest in the property to pass to his own wife or children. Too, if any of the parties did not get along with others, each could withdraw, take his interest outright, defeat the rights of the survivors and break up the farm. There is a lack of certainty about a joint tenancy that makes its use among two generations somewhat questionable.

A joint tenancy also could be created by will between the surviving wife and the farming son, or among the wife and all the children, or among the farming son and the other children. The same objections apply—it is too uncertain for the farming son to warrant putting money, by improvements or payments, into property that will pass to other owners if he dies first or that can be divided up at the whim of the other owners.

Further, the joint tenancy is not favored by the tax laws. If the farm is of substantial value, the gift tax, the estate tax, the inheritance tax and the income tax may often have a greater cumulative effect upon a holding in joint tenancy than upon other types of holdings. (See pp. 210 ff.) The importance of the tax results will depend upon each particular situation.

TENANCY-IN-COMMON

The tenancy-in-common is another form of joint ownership that can be used to pass a portion of an operating farm to the second generation without disturbing the farm operation. By taking title as tenants-in-common, several persons can own the same piece of land in undivided shares. Thus, a father could transfer an undivided share of the farm to a son and both could continue to work it together. Such an arrangement could be combined with a father-son partnership, or with a lease arrangement whereby the son leases the father's share of the land and works the whole farm himself.

There is no right in the surviving owner to take the whole farm as is true in the joint tenancy. Each share is owned outright and passes at death to heirs at law or under a will. Thus, a son's family is protected, if he should die before the other owners. The other characteristic of the joint tenancy does exist in the tenancy-in-common—that is, a tenant-in-common can have the property physically divided and have his share separated from the others, or he can demand that the property be sold and he receive his share in money.

If the family is not worried about one of the tenants-in-common demanding a physical share of the land, this device can be effectively used on a combined life-death transfer, or at death to provide for the wife and other children. For example, if, as suggested above, the father transferred an undivided half interest to the son, and both worked the farm, the father could leave his remaining half at his death to his widow or to the other children. The commercial transaction could be worked in by having the farming son make payments to the father, if it was a lifetime transaction, or to the widow or other children if the plan was created at death. Or, it would be possible to give the farming son an option to buy out the interest of the owners of the other undivided shares.

The tenancy-in-common has an additional feature that makes it a useful planning tool. The shares need not be even. Thus, a father could transfer a small undivided interest to the son to begin with, and then as the son prospered, additional fractions could be conveyed either by gifts or by sales. The portion remaining in the father's name at his death might be left to the wife or other children with or without a provision permitting the farming son to buy them out. Such a plan can avoid saddling the son with large debts by letting him buy as much as he can at any time. The risk of the market could be shared by both father and son if they decide that the price for each parcel shall be determined by market conditions at the time of each purchase.

The tax disadvantages that result in the joint tenancy do not occur in the tenancy-in-common.

LIFE ANNUITIES

The annuity is a very old, and often satisfactory method of making a present transfer of the farm to a second generation and at the same time obtaining a continuing income for the parents or a surviving spouse. In simplest form, an annuity is a right to a sum of money each year for a specified period. The life annuity, discussed here, is only one kind of annuity; one in which the specified period is the lifetime of the annuitant. The life annuity is very similar to the life estate discussed earlier in this bulletin, except that the annuitant's right is a claim to money, rather than an interest in the land itself.

For example, the owner of a productive farm might transfer the farm to his son in return for a promise to pay $3,000 per year to the father for life. There could be some peculiar disadvantages to such a plan. If the father dies early, the son will receive the farm for only a fraction of its value. If the father lives for a long time, the price for the farm may become excessive. Furthermore, if the annual payment is a fixed amount, it is due and payable whether the farm income is high or low. If the right to the annual payment is based only upon the promise of the son, the father would have no claim to the land if payments were not made.

These problems can be solved by a well-considered agreement using a flexible scale of payments or a minimum or maximum total payment, or by making the money claim a charge on the land in such a way that if payments are not made, the father has a right to foreclose on the land in the hands of the son or against any person who bought from the son. A properly worked out annuity can become the basis for a satisfactory farm distribution plan.

Obviously the annuity can be used at any stage of the distribution plan by directing the payments to the person to be benefited (wife or other children) during life or at death. Suppose there was a lifetime transaction, and the father was to receive a certain minimum amount. If he died before receiving that amount, he would be able to give by will the right to receive the rest of the payments.

A variation of the annuity has been used for many years in parts of Wisconsin.[107] The settlers brought over from Central Europe the idea of the so-called "bond of maintenance" or "Bohemian contract," which is really a hybrid arrangement combining a life estate and a money annuity. Parents transfer the land outright to the children. A detailed agreement is worked out whereby the children provide living

[107] Parsons, Kenneth H. and Waples, Eliot O., Keeping the farm in the family. Wis. Agr. Exp. Res. Bul. 157. 1945.

quarters for the parents, usually on the farm, and guarantee to provide certain specified items, for example, food. To insure that the children carry out the agreement, the bond of maintenance contains a provision permitting the parents to regain the land if the children fail to keep their bargain. Apparently very few instances have occurred in which parents were forced to take such action.

An annuity-based farm transfer plan can make use of a commercial annuity purchased from an insurance company.[108] The son or other person taking over the farm would pay the cost of the annuity to the insurance company; the company, in turn, would assume the obligation to make regular monthly or yearly payments to the persons named in the annuity contract. If the annuity was purchased by a lump sum payment at the time the income payments were to begin, the son could raise the money to make the purchase by placing a mortgage on the farm to which he had received title.

Table 12 shows the monthly payments to an annuitant for the remainder of his lifetime which $1,000 will buy under immediate annuities—that is, under annuities with income payments beginning 1 month after the date of issue. These payments are representative incomes guaranteed under so-called nonparticipating annuities currently being issued by insurance companies. Two bases are shown for annuity plans. The first includes monthly payments under a life annuity contract. This is a straight life annuity under which the quoted income will continue during the lifetime of the annuitant with no payment due at or after his death. The second is a cash refund life annuity. Under this plan, guaranteed monthly payments will continue for the lifetime of the annuitant, with an additional lump sum payment at his death equal to the excess, if any, of the purchase price over the sum of the monthly payments received.

The refund annuity plan would be particularly applicable in situations where, to guarantee a minimum price for the farm, for example, it is desired to make certain that the total income payments under the annuity will at least equal the purchase price. However, because of this additional guarantee under the refund annuity, the guaranteed income obtainable for a given sum is less per month than under the straight life annuity.

If the parents want a joint annuity which would insure both of them or the survivor an income for the rest of their lives, the cost would be somewhat higher—or stating it another way, $1,000 would purchase less monthly annuity.

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[108] For a detailed discussion of the annuity principle, see Ralph R. Botts, Use of the annuity principle in transferring the farm from father to son. Jour. Farm Econ., Vol. XXIX No. 2. 1947.

TABLE 12. MONTHLY PAYMENTS $1,000 WILL BUY UNDER A LIFE ANNUITY AND UNDER A CASH REFUND ANNUITY CONTRACT.*

Age of father when annuity begins (years)	Age of mother when annuity begins (years)	Monthly payment under life annuity contract**	Monthly payment under cash refund life annuity***
50	55	$4.06	$3.44
51	56	4.16	3.49
52	57	4.27	3.55
53	58	4.38	3.61
54	59	4.50	3.67
55	60	4.62	3.73
56	61	4.75	3.80
57	62	4.88	3.87
58	63	5.03	3.94
59	64	5.18	4.01
60	65	5.34	4.08
61	66	5.51	4.16
62	67	5.69	4.24
63	68	5.87	4.32
64	69	6.07	4.40
65	70	6.29	4.49
66	71	6.51	4.58
67	72	6.75	4.67
68	73	7.00	4.77
69	74	7.27	4.86
70	75	7.56	4.96

* Monthly payments representative of those made under nonparticipating annuity contracts issued by United States insurance companies. Unique manual of life insurance, published by the National Underwriter Co., 420 East Fourth Street, Cincinnati 2, Ohio. 1952. p. 977.

Similar contracts are issued on a participating basis at slightly higher rates. Under this arrangement, guaranteed annuity payments are increased by dividends.

** Payments that will be made monthly to the annuitant beginning 1 month from the time the contract is issued, until the death of the annuitant.

*** Payments that will be made monthly beginning 1 month from the time the contract is issued, until the death of the annuitant. In addition to the monthly income this type of annuity guarantees a benefit at the death of the annuitant equal to the excess, if any, of the purchase price over the sum of the income payments received.

Table 13 presents monthly payments that the parents or the survivor would receive for each $1,000 applied to the purchase of a joint life and survivor annuity. These incomes, again, are representative of those currently guaranteed on a nonparticipating basis by insurance companies. The income payments under a joint life and survivor annuity do not change in amount at the death of the first annuitant. Variations of the joint life and survivor annuity may be purchased under which the income payments to the surviving parent would be, for example, two-thirds of that payable while both parents were living. Any such reduction in income to the survivor would, for each $1,000 of purchase price, increase the income while both parents were living. These rates are representative of those currently guaranteed on a nonparticipating basis by insurance companies.

Further variations in the joint life and survivor annuity may be worked out also. For example, if a joint and two-thirds survivorship arranged were desired whereby the sur-

TABLE 13. MONTHLY PAYMENTS $1,000 WILL BUY UNDER A JOINT LIFE AND SURVIVOR ANNUITY.*

Age of father	If father is older than mother by					Equal ages	If mother is older than father by		
	5 yrs.	4 yrs.	3 yrs.	2 yrs.	1 yr.		1 year	2 years	3 years
50	$3.00	$3.03	$3.06	$ 3.10	$3.13	$3.17	$3.20	$3.23	$3.27
51	3.05	3.08	3.12	3.15	3.19	3.23	3.26	3.30	3.33
52	3.10	3.14	3.18	3.21	3.25	3.29	3.33	3.36	3.40
53	3.16	3.20	3.24	3.28	3.32	3.36	3.39	3.43	3.47
54	3.22	3.26	3.30	3.34	3.38	3.42	3.47	3.51	3.55
55	3.28	3.32	3.37	3.41	3.45	3.50	3.54	3.58	3.63
56	3.34	3.39	3.44	3.48	3.53	3.57	3.62	3.67	3.71
57	3.41	3.46	3.51	3.56	3.61	3.65	3.70	3.75	3.80
58	3.49	3.54	3.59	3.64	3.69	3.74	3.79	3.84	3.89
59	3.56	3.61	3.67	3.72	3.77	3.83	3.88	3.94	3.99
60	3.64	3.70	3.75	3.81	3.87	3.92	3.98	4.04	4.09
61	3.72	3.78	3.84	3.90	3.96	4.02	4.08	4.14	4.20
62	3.81	3.87	3.94	4.00	4.06	4.13	4.19	4.25	4.32
63	3.91	3.97	4.04	4.10	4.17	4.24	4.30	4.37	4.44
64	4.00	4.07	4.14	4.21	4.28	4.35	4.42	4.49	4.56
65	4.11	4.18	4.25	4.33	4.40	4.47	4.55	4.63	4.70
66	4.21	4.29	4.37	4.45	4.53	4.60	4.68	4.76	4.84
67	4.33	4.41	4.49	4.57	4.66	4.74	4.83	4.91	5.00
68	4.45	4.54	4.62	4.71	4.80	4.89	4.98	5.07	5.16
69	4.58	4.67	4.76	4.85	4.95	5.04	5.14	5.23	5.33
70	4.71	4.81	4.91	5.01	5.11	5.21	5.31	5.41	5.51

* Monthly payments listed in this table are representative of those made under nonparticipating joint life and survivor annuities issued by United States insurance companies. Unique manual of life insurance, National Underwriter Co., 420 East Fourth Street, Cincinnati 2, Ohio. 1952. p. 997.

The payments listed on this table begin 1 month after the contract is issued and continue as long as either husband or wife lives. Similar contracts are issued on a participating basis at slightly higher rate.

viving parent, would receive two-thirds of the payments both parents had been receiving, the following annuities could be purchased:

(1) A life annuity for the father to provide one-third of the desired monthly income,

(2) A life annuity for the mother to provide one-third of the desired monthly income, and

(3) A joint and survivor annuity on the lives of the father and mother to provide one-third of the desired monthly income.

If the farm transfer annuity plan was begun while the parents and son were relatively young, the money to provide the annuity at parents' retirement could be accumulated on an installment basis during the years the father and son were active in operating the farm together. Table 14 shows annual payments that will accumulate to $1 over various periods from 1 year through 20 years using several rates of interest as examples.

TABLE 14. ANNUAL DEPOSIT THAT WILL ACCUMULATE TO $1.00 AT THE END OF THE PERIOD OF PAYMENT.

Period of payments (years)	Rates of interest				
	2%	2½%	3%	3½%	4%
1	$1.000000	$1.000000	$1.000000	$1.000000	$1.000000
2	.495050	.493827	.492611	.491400	.490196
3	.326755	.325137	.323530	.321934	.320349
4	.242624	.240818	.239027	.237251	.235490
5	.192158	.190247	.188355	.186481	.184627
6	.158526	.156550	.154598	.152668	.150762
7	.134512	.132495	.130506	.128544	.126610
8	.116510	.114467	.112456	.110477	.108528
9	.102515	.100457	.098434	.096446	.094493
10	.091327	.089259	.087231	.085241	.083291
11	.082178	.080106	.078077	.076092	.047149
12	.074560	.072487	.070462	.068484	.066552
13	.068118	.066048	.064030	.062062	.060144
14	.062602	.060537	.058526	.056571	.054669
15	.057825	.055766	.053767	.051825	.049941
16	.053650	.051599	.049611	.047685	.045820
17	.049970	.047928	.045953	.044043	.042199
18	.046702	.044670	.042709	.040817	.038993
19	.043782	.041761	.039814	.037940	.036139
20	.041157	.039147	.037216	.035361	.033582

The formula for calculating the yearly deposit necessary to accumulate the sum of $1 over a period of years is:

$$R = \frac{i}{(1+i)^n - 1}$$

where R = annual payment, i = rate of interest and n = period of years over which payments are made. Thus, if $.041157 were deposited in a savings account bearing 2 percent interest at the end of this year, and for the next 20 years similar deposits were made, in 20 years the account would equal $1. After deciding upon the length of period over which the annuity is to be accumulated, the rate of interest to be used and the amount of the desired annuity, the annual deposit required may be determined.

Another means of achieving the same objective would be to purchase a deferred annuity. Such deferred annuity may be purchased by a single premium or by annual installment premiums prior to the retirement date. It may be desirable, for example, to purchase an annual-premium deferred annuity by such annual installment premiums as would be certainly covered by annual farm income, and to supplement this annuity with single-premium deferred annuities purchased by any lump sums which become available.

The deferred annuities illustrated in tables 15 and 16 are of a type which provide a death benefit equal to the total premiums paid, or the cash surrender value if greater, in event the annuitant dies before the annuity income begins. Prior to the date when the annuity income begins, the contract could be owned and controlled by either the son or the parent, and a beneficiary could be named to receive any death benefit.

Table 15 shows the monthly life income beginning at retirement ages 60, 65 and 70 purchased by annual premium installments of $100 each from various ages at issue. Table 16 shows corresponding monthly life incomes purchased by a single premium of $1,000 at issue. The life incomes illustrated would cease at the death of the annuitant, but other types of income arrangements are available to provide a return in event the annuitant dies soon after retirement. The joint life and survivor type of life income is also usually available. The incomes illustrated in tables 15 and 16 are those of a particular company; but they are representative of those currently available from insurance companies on so-called participating deferred annuities under which the guaranteed benefits would be increased by dividends declared. A choice of income bases are available at retirement including single life annuity, joint and survivorship annuity, refund and other arrangements discussed earlier in this section.

Similar objectives could be achieved by parents making interest-bearing, amortizing loans to a child (or children) with provision in the note (or notes) that all or part of the indebtedness would be cancelled upon the death of the remaining parent.

TABLE 15. MONTHLY PAYMENTS $100 OF ANNUAL PREMIUM WILL BUY UNDER AN ANNUAL-PREMIUM DEFERRED ANNUITY.

Age at issue	Guaranteed monthly income for life beginning at age					
	60 years		65 years		70 years	
	Male	Female	Male	Female	Male	Female
40	$12.99	$11.23	$20.36	$17.31	$31.27	$26.04
41	12.18	10.53	19.30	16.41	29.84	24.85
42	11.39	9.84	18.26	15.52	28.85	23.69
43	10.61	9.17	17.24	14.66	27.08	22.56
44	9.86	8.52	16.25	13.81	25.75	21.44
45	9.12	7.88	15.27	12.99	24.44	20.36
46	8.40	7.26	14.32	12.18	23.17	19.30
47	7.69	6.64	13.39	11.39	21.92	18.26
48	7.00	6.05	12.48	10.61	20.70	17.24
49	6.32	5.46	11.59	9.84	19.51	16.25
50	5.66	4.89	10.72	9.12	18.34	15.27
51	5.01	4.33	9.87	8.40	17.20	14.32
52	4.38	3.78	9.04	7.69	16.08	13.39
53	3.76	3.25	8.23	7.00	14.99	12.48
54	3.15	2.72	7.43	6.32	13.92	11.59
55	2.56	2.21	6.65	5.66	12.88	10.72
56	—	—	5.89	5.01	11.86	9.87
57	—	—	5.15	4.38	10.86	9.04
58	—	—	4.42	3.76	9.88	8.23
59	—	—	3.71	3.15	8.92	7.43
60	—	—	3.01	2.56	7.99	6.65

TABLE 16. MONTHLY PAYMENTS $1,000 OF SINGLE PREMIUM WILL BUY UNDER A SINGLE-PREMIUM DEFERRED ANNUITY.

Age at issue	Guaranteed monthly income for life beginning at					
	60 years		65 years		70 years	
	Male	Female	Male	Female	Male	Female
40	$8.19	$7.08	$10.77	$9.16	$14.46	$12.04
41	8.01	6.93	10.53	8.96	14.14	11.78
42	7.84	6.77	10.30	8.76	13.83	11.52
43	7.66	6.62	10.08	8.57	13.52	11.26
44	7.50	6.48	9.85	8.38	13.22	11.01
45	7.33	6.34	9.64	8.19	12.93	10.77
46	7.17	6.20	9.43	8.01	12.16	10.53
47	7.01	6.06	9.22	7.84	12.37	10.30
48	6.86	5.93	9.01	7.66	12.10	10.08
49	6.71	5.80	8.82	7.50	11.83	9.85
50	6.56	5.67	8.62	7.33	11.57	9.64
51	6.41	5.54	8.43	7.17	11.32	9.43
52	6.27	5.42	8.25	7.01	11.07	9.22
53	6.13	5.30	8.07	6.86	10.82	9.01
54	6.00	5.19	7.89	6.71	10.59	8.82
55	5.87	5.07	7.71	6.56	10.35	8.62
56	—	—	7.54	6.41	10.12	8.43
57	—	—	7.38	6.27	9.90	8.25
58	—	—	7.22	6.13	9.68	8.07
59	—	—	7.06	6.00	9.47	7.89
60	—	—	6.90	5.87	9.26	7.71

Very important in working out annuity plans are the tax results which are determined by the manner in which the plan is set up. No annuity plan should be adopted without careful consideration of the income and death tax costs and savings.

TRUSTS

A trust is possible in planning farm distribution, though its use is somewhat limited. A trust is an arrangement whereby the management, control and legal title to property is placed in one person, the trustee. who manages or operates the property for the benefit of other persons, the beneficiaries.[109] A trust can be created during life to continue after death or it can be set up in a person's will to be effective at his death.

Some professional trustees, including banks and trust companies, are loathe to accept farms; others are equipped for such duties. It may be the desire of the farm family to have someone with a family connection act as trustee. The wisdom of the trust device turns on the family situation. It is an excellent way to have a farm operated by a son for the benefit of himself and several minor brothers and sisters. Or an uncle might serve as trustee of a farm, to manage it

[109] Bogert, Law of trusts. 3rd ed. West Publishing Co., St. Paul. 1952.

until a son is able to take it over. It would be possible for a son to serve as trustee of a farm for his mother for her life, then terminate the trust and take the property in his own right. It may serve to provide for an incapacited child. A "spendthrift" trust might be used to protect a family member from his own financial indiscretion. The trust device could provide for management of the land when the owners live too far away.

The trustee bears a fiduciary relationship to a beneficiary, and for that reason courts have limited the power of a trustee to act unless the written document creating the trust sets out what the trustee may do. Since farm management requires the making of many important decisions and the exercise of personal judgment at all times, the limitations that the law places upon the exercise of discretion by a trustee might hamper the operation of a farm. Where a farm is placed in trust, great care must be taken to select a well qualified trustee and to give him the necessary powers of management in written trust instrument. In the absence of complete and full powers granted to the trustee, he may have to petition the court before making important farm decisions.

The trust does not offer another way to work out the basic farm transfer plan. Rather it is a device that may be used to provide for the management of a farm while the plan is operative. The underlying transfer and income decisions of the plan must be made before deciding that a trust is a vehicle for carrying them out. Most of the methods suggested so far could be carried out, if advisable, through the medium of the trustee-manager.

It is always advisable to determine the nature of the liability and responsibility of a trustee before accepting a job, or before requesting someone else to undertake it. From the tax viewpoint the trust with family members as trustees and beneficiaries can be troublesome. Oftentimes, these difficulties can be overcome in setting up the trust; in other cases, it may be necessary to use a bank, trust company or other independent trustee. On the other hand, a trust properly established can be used to achieve over-all family tax savings.

PARTNERSHIPS

Recent developments in the business world can be successfully adapted to the problem of transferring the farm within the family. Farm partnerships are common, but it is not always understood how the partnership can be a means of moving the farm from one generation to the next. One way to use the farm partnership is for the son to work his way into the farm by means of gifts or sales. As the father advances in years, and the venture prospers, arrangements can be made to permit the son to buy out part of the father's interest. Or the father could give portions of the land to the son which the son would keep in the partnership, thereby increasing his share. At the point at which the father's interest has diminished to the minimum consistent with the income he desires from the partnership, further sales or gifts should cease and the father's remaining interest should be kept by him. At this point provision should be made for the son to obtain the father's interest at his death. This is regularly done by a "buy and sell" agreement whereby the partners agree that the father's remaining share of the partnership shall be sold to the son at the father's death, an agreed payment to be made by the son to his mother or brothers and sisters or to those persons who would inherit the father's interest. To obtain the funds necessary to make this final purchase, the son might take out insurance on the father's life. Or it could be arranged that payments be made after the father's death on an installment basis to the mother or brothers and sisters. Such arrangements can be adjusted to any family situation. For example, it might be wise to have a provision whereby the father or other persons could buy the son's share if he died first. If the father decided to retire and no longer wished to run the risks of an operating partner, a limited partnership might be arranged which would entitle him to income but limit his liability for partnership debts or losses. The buy and sell arrangement would still be used.

Any such plan must be carefully thought out and worked out with due regard for the legal and tax problems. Recent tax legislation has eliminated some of the earlier difficulties of the family partnership and tends to encourage the extended use of partnerships in property distribution plans as well as income-spreading plans to save taxes for the family. Properly planned, the farm partnership with a buy and sell agreement is an effective and flexible device that can be adjusted to suit the needs of the family, and particularly to provide some inheritance for the non-farming members of the family without dividing the land itself.

CORPORATIONS

Little use has been made of the corporate structure for farm operations in Iowa despite its many advantages as a form of business organization. The corporate farm lends itself readily to planning farm distribution since it converts the nature of the ownership from interests in the land, machinery, livestock, etc., to readily transferable certificates representing ownership in the business entity. Further, a corporation may be created to last for a period of years or forever; therefore it continues to exist as a functioning unit even though the shares are transferred during life or upon the death of the share owners.

If, for example, a father incorporated his farm, the father might be hired by the farm corporation as manager. His compensation would be salary and dividends on the shares of stock. In the same way the son could be hired by the corporation. The son's interest in the farm could be gradually increased by gifts of shares, or the father and son could work out a plan whereby the son purchased additional shares of stock as the project prospered.

Like the partnership, the corporate farm can be used to provide security for the surviving wife or to permit other children to share in the inheritance without sacrificing the unity of the farm. For example, assume that a father incorporated his farm and issued 100 shares of stock to himself. He and son A operated the farm. Son A gradually purchased 30 shares and made a "buy and sell" agreement with the father whereby the son should buy 30 additional shares of the stock at the father's death. This purchase would provide funds to pay a legacy to daughter B. The remaining 40 shares could be left by the father to the mother, thus she would be entitled to 40/100 of the profits after the son is paid a salary. At her death, she might leave her stock to son A, who would then own the whole farm. Or, she could leave some of the stock to daughter B and give son A an option to buy it from daughter B.

It is clear from the above example that very flexible plans can be built around the corporate structure in the effort to share farm profits among the family members with fair treatment to the persons who will stay home to operate the farm.

Here, as in the partnership, careful attention must be given to the legal and tax problems, so that the maximum advantages of the business form are obtained. It will be found in many situations that there is some additional cost. However, that extra cost may be a very reasonable price to pay for the busines advantages and the accomplishment of family goals.

Neither this list of tools for intra-family farm transfers nor the discussion of them is meant to be exhaustive. Other devices are available. Furthermore, many important details relating to these tools have been omitted. Obviously, it is impossible to present the many different problems that might arise in each particular situation. However, careful examination of these means should point the way to more satisfactory property transfers by enlarging the range of choice of alternative means.

TAX ASPECTS OF INTRA-FAMILY FARM TRANSFER PLANS

In a period of high tax rates and high property valuations, taxes assume a role of great importance in planning the distribution of farm property. One should be aware of the existing tax structure, both federal and state, in order to plan the ultimate disposition of property in a way that will minimize taxes without destroying or impairing the desired plan of management and distribution.

DEATH TAXES

There are two types of taxes levied upon property passing at death. In some cases, property that was transferred during life will also be taxed at death, if the transferor kept some strings on it. In theory, death taxes are levied upon the right to transfer or receive property at death, though in a practical sense it is the property itself that is taxed.

One form of death tax is the estate tax. This is levied upon the estate of a decedent without reference to the persons who are to receive his property. As is true in the income tax, estate tax rates are graduated—that is, the percentage rate of tax increases as the amount of property increases. The federal government levies an estate tax.

The other form of death tax is the inheritance tax. This tax is levied upon the amount of property that passes to particular beneficiaries. These rates, too, are graduated. The amount of property that can go to a particular beneficiary free of tax and the rate of tax on the excess vary according to the degree of family relationship between the decedent and the beneficiary. For example, the inheritance tax on property left to a widow is much less than the tax on the same amount left to a cousin. The State of Iowa levies an inheritance tax.

FEDERAL ESTATE TAX

The federal estate tax is levied upon the value of the property owned by the decedent at his death, and upon other property transferred during his life over which he retained some interest or control. The total value of these is the "gross estate." From the "gross estate" certain deductions and exemptions are taken to compute the "net estate." Graduated rates are applied to the value of the net estate to determine the amount of the tax due. The gross estate includes:[110]

(a) all property which the decedent owned at his death (except real property outside of the United States);

[110] Internal revenue code, §811.

(b) life insurance payable to the estate or to other beneficiaries if the decedent paid the premiums, or had any rights in the policy;

(c) the full value of property owned in joint tenancy with right of survivorship (less any portion that did not originate, directly or indirectly, with the decedent);

(d) property given away within 3 years before death if the gifts were made in contemplation of death;

(e) property given away during life, if the decedent retained some interest or control or power over the property— i.e., where a gift had strings on it; or where the intended recipient could not get possession and enjoyment of the property before the decedent's death; or where the recipient had to outlive the decedent to be able to use the property;

(f) property given away by the decedent in which he kept a life estate for himself—i.e., "reserved life estate";

(g) property over which the decedent had a power of appointment which he could have exercised for his own benefit.

To determine what the decedent left "free and clear," and to eliminate the property that can be given free of tax, certain deductions and an exemption are substracted from the gross estate to determine the amount of the net estate upon which the tax falls.[111] The deductions allowed in computing the net estate are:

(a) debts due at death, funeral expenses and costs of administering the estate;

(b) the amount of money or property left to charitable, religious and educational organizations—the "charitable deduction";

(c) the amount of money or property left outright to a surviving spouse—but this deduction cannot be more than 50 percent of the adjusted gross estate[112] even though more than that amount actually goes to the spouse. This is the "marital deduction," which in effect permits a person to leave part of his property to a spouse free of estate tax. See p. 206 for a discussion of tax savings that can arise from the use of the marital deduction;

(d) in certain cases, property which had been subject to estate taxes within 5 years.

An exemption is allowed in the amount of $60,000. This actually means that the first $60,000, after all the above is subtracted, passes free of tax. Or if the estate is not greater than $60,000 after all deductions have been taken, no tax will be due.

The amount so determined is the net estate, upon which the graduated tax is levied. The percentage of tax increases as the net estate increases. See table 17, Federal Estate Tax Rates.

Actually the federal estate tax is two separate taxes, a

[111] Internal revenue code, §812, 935 (c).

[112] Adjusted gross estate is the "gross estate" less debts and expenses mentioned in paragraph (a).

basic tax and an additional tax. The basic tax serves only to fix the amount of a credit or offset allowed against the federal estate tax if the taxpayer has paid certain state death taxes. The amount of the credit is comparatively small and is assumed to be claimed in table 17.[113] When allowed, the credit is usually claimed. If the regular Iowa inheritance tax[114] is less than the amount of the credit allowed, another Iowa statute levies a tax in the amount of the unused credit.[115]

TABLE 17. FEDERAL ESTATE TAX RATES.*

Net estate** (A)	(B)	Net tax on amount in column (A) (C)	Rate of net tax on excess over amount in column (A) (D)
			%
$ 0 —	$ 5,000	$	3.0
5,000 —	10,000	150	7.0
10.000 —	20,000	500	11.0
20,000 —	30,000	1,600	14.0
30,000 —	40,000	3,000	18.0
40,000 —	50,000	4,800	21.2
50,000 —	60,000	6,920	24.2
60,000 —	90,000	9,340	27.2
90,000 —	100,000	17,500	26.4
100,000 —	140,000	20,140	28.4
140,000 —	240,000	31,500	27.6
240,000 —	250,000	59,100	26.8
250,000 —	440,000	61,780	28.8
440,000 —	500,000	116,500	28.0
500,000 —	640,000	133,300	31.0
640,000 —	750,000	176,700	30.2
750,000 —	840,000	209,920	32.2
840,000 —	1,000,000	238,900	31.4
1,000,000 —	1,040,000	289,140	33.4
1,040,000 —	1,250,000	302,500	32.6
1,250,000 —	1,500,000	370,960	35.6
1,500,000 —	1,540,000	459,960	38.6
1,540,000 —	2,000,000	475,400	37.8
2,000,000 —	2,040,000	649,280	41.8
2,040,000 —	2,500,000	666,000	41.0
2,500,000 —	2,540,000	854,600	45.0
2,540,000 —	3,000,000	872,600	44.2
3,000.000 —	3,040,000	1,075,920	47.2
3,040,000 —	3,500,000	1,094,800	46.4
3,500,000 —	3,540,000	1,308,240	49.4
3,540,000 —	4,000,000	1,328,000	48.6
4,000,000 —	4,040,000	1,551,560	52.6
4,040,000 —	5,000,000	1,572,600	51.8
5,000,000 —	5,040,000	2,069,880	55.8
5,040,000 —	6,000,000	2,092,200	55.0
6,000,000 —	6,040,000	2,620,200	58.0
6,040,000 —	7,000,000	2,643,400	57.2
7,000,000 —	7.040,000	3,192,520	60.2
7,040,000 —	8,000,000	3,216,600	59.4
8,000,000 —	8,040,000	3,786,840	62.4
8,040,000 —	9,040,000	3,811,800	61.6
9,040,000 —	10,000,000	4,427,800	60.8
10,000,000 —	10,040,000	5,011,480	61.8
10,040,000 —	———	5,036,200	61.0

* Internal revenue code §810,935. With adjustment for 80 percent credit for state taxes paid.

** After all deductions and $60,000 exemption.

[113] For example, referring to table 17, no credit is allowed on a net estate of $40,000 or less, while on an estate of $100,000, the maximum credit would be $560.

[114] Code of Iowa (1950), Chap. 450.

[115] Iowa estate tax, Code of Iowa (1950) Chap. 451.

IOWA INHERITANCE TAX

The State of Iowa also imposes taxes on property passing at death. The primary tax is known as the Iowa inheritance tax and is levied upon the receipt of property by each beneficiary. The other Iowa death tax, the so-called Iowa estate tax, serves only to absorb any unused credit allowed against the federal estate tax. The property subject to the Iowa inheritance tax is similar to that subject to the federal estate tax but the rates, exemptions allowed, and method of taxing are somewhat different.

The Iowa inheritance tax reaches:[116]

(a) property passing by will or intestacy (except property permanently located outside the state);

(b) insurance payable to the decedent's estate (but not insurance payable to a named beneficiary);

(c) property given away before death if the transfer was made in contemplation of death;

(d) property given away before death if the transferor reserved a life estate for himself, or if the use and enjoyment of the property could not be obtained by the recipient until the transferor died;

(e) property over which the decedent exercised a power of appointment;

(f) property held in joint tenancy to the extent that the property really originated with or was purchased by the decedent.

In determining the net amount of the estate subject to tax, certain deductions and exemptions are allowed. Deductions are allowed for (a) debts due at death, (b) certain taxes owed by the decedent and the estate, (c) funeral expenses, (d) temporary allowance for a widow and young children while the estate is being settled, (e) costs and fees of administering or settling the estate, and (f) property upon which an inheritance tax had been paid within 2 years prior to the death of the decedent. This determines the net amount of property available for distribution to beneficiaries upon which the computation of the tax chargeable to each beneficiary is based.

Not all property passing at death is taxed. Where the estate does not exceed $1,000, no tax is imposed. Property passing to cemetery associations, veterans groups, humane societies, Iowa nonprofit religious, charitable and educational organizations, or to resident trustees for such purposes, is not taxed. Nor is property taxed if it is left to public libraries and art galleries, hospitals, or cities and towns for public purposes, if these are within the state. Provisions for ceme-

[116] Code of Iowa (1950) §450.3.

tery care and certain religious services may be made free of tax.[117]

Property left to relatives is taxed, but the rate of tax and the amounts that may be left tax-free depend upon the degree of relationship to the decedent. Exemptions are granted to certain relatives of the decedent permitting some property to pass to them free of tax. The tax then falls upon any property received over and above the amount of the exemption. Thus, the first $40,000 of property passing to the surviving husband or wife is exempt from the Iowa inheritance tax, as is the first $15,000 passing to each child (natural or adopted), the first $10,000 passing to a parent, and the first $5,000 passing to grandchildren or other lineal descendants.[118] Tax rates on property left to people in this group range from 1 percent on the first $10,000 above the exempt amount to 8 percent on amounts over $300,000 in excess of the applicable exemption.[119]

No exemption is allowed for property passing to brothers, sisters, sons-in-law, daughters-in-law, or stepchildren of the decedent. For these persons, the tax rate ranges from 5 percent to 10 percent depending upon the amount of property received. Amounts left to all other persons are taxed at rates from 10 percent to 15 percent. Property left to charitable, religious and educational organizations not organized in Iowa, or for such uses outside Iowa, is taxed at 10 percent. The tax is 15 percent on property left to groups organized for profit.[120] Table 18 sets forth the tax rates for classes subject to graduated rates.

While the Iowa tax is imposed upon the person receiving the property, the law provides that both the recipient and the executor or administrator are liable for payment of the tax, and the executor or administrator is required to deduct the amount of tax (or collect it from the person receiving the property) before he transfers the property to the recipient.[121] Payment is to be made within 18 months of the death of the decedent, although there are provisions for postponing the payment in case of hardship.[122]

FEDERAL GIFT TAX[123]

The federal gift tax is levied upon transfers by gift made during life. Complete and outright lifetime gifts are taxed in

[117] Code of Iowa (1950) §450.4.
[118] Ibid. §450.9.
[119] Ibid. §450.10.
[120] Ibid.
[121] Ibid. §450.5, 450.53, 450.57.
[122] Ibid. §450.6.
[123] Iowa has no gift tax.

TABLE 18. IOWA INHERITANCE TAX RATES.*

Amount above exemption	Tax rate per each bracket
Class 1 — spouse, child, parent, or lineal descendant:	
$ . . . . . to $ 10,000	1 Percent
10,000 to 25,000	2 Percent
25,000 to 50,000	3 Percent
50,000 to 100,000	4 Percent
100,000 to 150,000	5 Percent
150,000 to 200,000	6 Percent
200,000 to 300,000	7 Percent
300,000 to	8 Percent
Class 2 — sibling, child's spouse, or stepchild:	
$ . . . . . to $ 25,000	5 Percent
25,000 to 50,000	6 Percent
50,000 to 100,000	7 Percent
100,000 to 200,000	8 Percent
200,000 to 300,000	9 Percent
300,000 to	10 Percent
Class 3 — persons not in class 1 or 2:	
$ . . . . . to $ 100,000	10 Percent
100,000 to 200,000	12 Percent
200,000 to	15 Percent

* Code of Iowa (1950) §450.10.

the year made, and are not subject to the estate tax at the death of the donor. Sometimes a transfer may be a gift for gift tax purposes and still be taxable at death because the donor retained certain powers or control over the property. In such cases, the gift tax paid is credited against the amount of the estate tax due to prevent a double tax.

Gift tax rates are about three-fourths of the estate tax rates. However, the computations and the exemptions differ so much that the gift tax on a transfer during life often will be considerably lower than the estate tax on a transfer of the same amount of property at death.

The gift tax law allows an annual exclusion from taxable gifts of $3,000 for each person to whom a gift is made. [124] In addition, each taxpayer-giver is granted a specific exemption of $30,000 which he can use at any time.[125] Thus, $3,000 in gifts can be made to **each** beneficiary in **each** year without tax. In addition, $30,000 in gifts (over and above $3,000 per recipient per year) may be made free of tax during the taxpayer's lifetime. After he has made gifts of $30,000 a person is taxed each year on the additional gifts made in that year (in excess of $3,000 to each recipient).

The characteristic of the gift tax is its cumulative nature. Gifts are taxed according to graduated rates, therefore the

[124] Internal revenue code §1003. No exclusion is allowed on the gift of a future interest.

[125] Internal revenue code §1004.

more gifts that have been made in past years, the higher the tax rate will be on gifts made during the current year. The gift tax is collected annually, so to figure the tax for any year, it is necessary to know the amount of gifts made in prior years. The gifts of the current year are added to all gifts made in previous years (since 1932)[126] to determine the rate of tax for this year's gifts, which are considered to be on the top of the pile. The method of computation is this:

(a) A tax is figured on all the net gifts made from 1932 to the **end** of the current year.

(b) A tax is figured on all the net gifts made from 1932 to the **beginning** of the current year.

(c) The **difference** is the tax due on the net gifts made during the current year.

"Net Gifts," as the words are used in this paragraph, means the aggregate of the gifts made in each year less (a) the exclusions allowed each year for each recipient, (b) the amount of any gift made to a charitable, religious or educational organization—the charitable deduction, (c) half of any gift made to a spouse after April 2, 1948—the marital deduction, and (d) the lifetime exemption of $30,000.[127]

Two 1948 additions to the gift tax law result in a special gift tax benefit to married persons. These are the so-called "split gift" and "marital deduction" provisions.

(a) **Split Gifts.** If a married person makes a gift to someone other than his or her spouse, the gift may be treated as given half by the donor and half by the spouse. This may be done even though only one of them owned the money or property given. It means that parents who have made no previous gifts could make gifts up to $60,000 free of tax by using the $30,000 exemption of the husband and the $30,000 exemption of the wife. In addition, $6,000 per year given to **each** beneficiary would be free of gift tax, because each spouse is entitled to a $3,000 exclusion for each beneficiary each year. For example—if a husband who had never made any substantial gifts gave $25,000 to **each** of his four children, the gift tax would be $6,750. If his wife, who had never made any substantial gifts, agreed to treat the gifts as "split gifts"— as if he gave $50,000 and she gave $50,000— the tax on each would be $270.00, a total of $540. If previous gifts have been made, the tax advantage of "splitting" would be even greater.[128]

(b) **Marital Deduction.** The gift tax marital deduction is similar to the estate tax marital deduction. It simply means that one-half of the gift from one spouse to the other is tax-free. The $30,000 exemption and the $3,000 annual exclusion can still be applied to offset the one-half of the gift to the spouse which is subject to tax. For example— if a single man, who had made no previous gifts, gave someone $100,000, the gift tax would normally be about $8,600. If a married

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[126] The gift tax law was enacted in 1932.

[127] Internal revenue code, §1003.

[128] Internal revenue code, §1000.

TABLE 19. FEDERAL GIFT TAX RATES.*

(A) Net gifts amounting to	(B) Net gifts not exceeding	Tax on amount in column (A)	Tax on excess up to amount in column (B)
$	$ 5,000	$	2¼ Percent
5,000	10,000	112.50	5¼ Percent
10,000	20,000	375	8¼ Percent
20,000	30,000	1,200	10½ Percent
30,000	40,000	2,250	13½ Percent
40,000	50,000	3,600	16½ Percent
50,000	60,000	5,250	18¾ Percent
60,000	70,000	7,125	21 Percent
70,000	100,000	9,225	21 Percent
100,000	200,000	15,525	22½ Percent
200,000	250,000	38,025	22½ Percent
250,000	400,000	49,275	24 Percent
400,000	500,000	85,275	24 Percent
500,000	750,000	109,275	26¼ Percent

* Internal revenue code §1001.

man gave $100,000 to his wife, and claimed the marital deduction, the gift tax would be about $950.[129]

There are rather technical rules that apply to the operation of the gift tax, particularly in connection with the reality of a purported gift and in connection with the use of the split gift and marital deduction provisions that are disregarded in this discussion. They should be discussed with a lawyer.

The person who made the gifts is liable for the tax for the year in which taxable gifts were made. Gift tax returns are required of the taxpayer for each year in which gifts are made in excess of the exclusions. Such returns are filed on or before March 15 of the following year. Recipients of gifts must file information returns. If the giver does not file a return and pay the tax, the recipient will be responsible for payment and the property given will be subject to a lien for the taxes due.

TAX-SAVING FEATURES OF FARM TRANSFER PLANS

Tax saving is legitimate and proper. A taxpayer always has the right to arrange his affairs to obtain the benefit of all special tax provisions and to minimize his taxes by an honest and fair plan of farm operation or distribution. The farm owner has a duty to his government to bear his proper share of taxes, but he is also responsible to his wife, children and heirs to pay no more than is due. Thus the tax aspects of each farm plan are important considerations.

It is not true that the smaller farm operator is unconcerned with tax matters. Even though his estate may not be

[129] Internal revenue code, §1004.

large enough to be subject to a federal estate tax, he cannot afford to ignore the effects of federal and state income taxes and the Iowa inheritance tax. In fact, the small farmer often has greater need for tax advice because unnecessary taxes will reduce the limited property available for distribution. Very small estates can be subject to inheritance taxes. Everyone is concerned with income taxes.

Since each farm estate represents a problem peculiar to the family and the property available, specific advice should always be obtained. However, it is well to be aware of the general lines of tax planning and tax saving.

Federal Estate Tax Planning. Generally, the usual methods of saving federal estate taxes are these, or some combination or variation of them:

(a) Use of lifetime gifts to cut down the amount of property owned at death, since taxes on lifetime gifts will usually be less than estate taxes on gifts at death.

(b) Use of the marital deduction to pass property to a surviving spouse free of estate tax. The property that passes to the spouse will be taxed in her estate at her death,[130] but under the estate tax system, the tax on property divided into two piles is less than the tax would be on the property in one pile. Too, each is entitled to the full exemption allowed at death. In addition the spouse might later give the property away, thereby cutting down her subsequent estate tax. A well organized family-farm transfer plan would combine the use of gifts and the marital deductions. Of course, much information must be obtained about the property of each spouse to insure that it qualifies for the marital deduction and to avoid creating unequal piles that will add taxes rather than save them. Many Iowa farmers have wills that do not give them the advantage of the marital deduction. Many insurance policies now held do not qualify for the marital deduction. These should be re-examined without delay.

(c) Use of a life estate to one generation followed by a remainder in the next generation can result in granting the use of the property to one generation for life without a tax at the death of the life tenant. It, in effect, skips the tax that would have been paid if the property had been transferred outright to one generation and then transferred again to the next generation. This method of transfer will not permit the benefit of the marital deduction, so an examination must be made to determine which plan is most advantageous. Sometimes a combination will work out—that is, half the estate goes to the spouse outright to obtain the full benefit of the marital deduction and the other half goes to the spose for life, remainder to the children to obtain the advantage of this principle. Too, the life estate provisions must be carefully worded or it may happen that the life tenant has so much power or control over the property that he or she will be considered as owning the whole interest and be taxed upon it at death.

Iowa Inheritance Tax Planning. Methods of saving taxes vary somewhat under the inheritance tax. There is no marital deduction allowed as in the federal estate tax. In some cases inheritance tax savings go hand in hand with

[130] Reference is generally made to a surviving wife, but the same thoughts apply to a surviving husband.

estate tax savings. In other cases they differ and may even conflict, making it necessary to consider the effect of both taxes upon any plan. The major lines of inheritance tax saving are these:

(a) Use of lifetime gifts. This parallels the federal tax principle. Iowa, of course, has no tax on lifetime gifts. A complete and outright gift made during life without strings or reservations will remove that property from inheritance taxation.

(b) Use of the life estate and remainder is oftentimes a method of avoiding an additional Iowa tax. This is the same principle as in the federal tax, but it, too, conflicts with the use of the marital deduction for federal taxes.

(c) Use of insurance payable to a named beneficiary rather than to the estate of the decedent. Such insurance is not taxed by Iowa, but is taxed by the federal government. This is particularly important to smaller estates.

(d) Use of exemptions and different rates permitted to recipients of varying degrees of relationship. For example, assume that a father wanted to leave $40,000 worth of property to a son and his family. If he left half to the son and half to the son's wife, the son would have an exemption of $15,000 and be taxed at 1 percent on $5,000. The daughter-in-law would have no exemption and be taxed at 5 percent on $20,000. However, if the bequest was made half to the son and half to his two children, only $15,000 would be taxed at 1 percent. Or it might happen that a man wanted to leave property to his wife's two grandchildren by a former marriage. No exemption is allowed for "step-grandchildren" and the rate of tax begins at 10 percent. If he left the property to his wife and let her leave it to her own descendants, the over-all tax cost would be less because of the availability of exemptions and lower tax rates for spouses and blood relatives. Even though a tax was levied at both deaths, the combined taxes would be less on a bequest under $300,000.

Some possible applications. Some examples will illustrate how some of these principles might be worked out. Assume that a farm operator with a wife and two sons, who are of age, has a present estate of $200,000, and that he expects to have about the same estate at death. He wants to leave his property to his wife and sons, and the wife will leave everything at her death to the sons. Assuming that he will die first,[131] he has several ways of achieving these purposes, with varying tax results. What are some of the possibilities?[132]

If the farm owner left a life estate to his wife, remainder to the sons, he would be allowed an exemption of $60,000 and owe a federal estate tax of $31,500. No marital deduction is allowed for the life estate to the wife. The Iowa inheritance tax, allowing an exemption of $40,000 to the widow and $15,000 to each son, would total $1,905.[133] No tax would be

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[131] Any planned distribution would, of course, prepare for the prior death of the wife.

[132] For purposes of these examples, debts due, costs and expenses of settling the estate are disregarded. Federal tax figures have been adjusted for credit for state taxes paid, wherever allowed.

[133] Assuming wife to be about 60 years of age.

due at the wife's death, making the over-all tax cost $33,405.

If he left all the property to the wife outright, the marital deduction (disregarding debts, expenses, etc.) would be $100,000, the exemption $60,000, leaving a net estate of $40,000 upon which a federal estate tax of $4,800 would be due. The Iowa inheritance tax would be $5,962. However, when the wife died, leaving the property to the sons, her estate would be taxed, this time without a marital deduction. Her federal estate tax would be $28,444, and the Iowa inheritance tax would be $3,532. The over-all tax cost is thus $42,738.

If he combined both methods, dividing the estate into two parts, one-half passing outright to the wife to qualify for the marital deduction and one-half passing to the wife for life,[133] remainder to the sons, the over-all tax burden would be $13,642. The husband's federal tax would be $4,800, the Iowa tax $3,415, and upon the wife's death, the federal tax would be $4,247 and the Iowa tax $1,180.

If he divided the property, half to the wife outright, and half to the sons outright, he would qualify for the marital deduction and owe the same federal estate tax of $4,800, but his Iowa tax would drop to $2,806. On the wife's death, with her estate left to the sons, there would be a federal tax of $4,520 and an Iowa tax of $1,218. The over-all tax cost of this plan is thus $13,344.

Four methods of distributing property to a wife and two sons, providing for the wife for her life and ultimately placing the total property in hands of the sons, result in death tax costs that range from a low of $13,344 to a high of $42,738.

Further analysis would be made of this family to determine the best income tax plan. It might be that the income tax results would warrant a plan different from any of these, but considering only these it is clear that income tax cost will be a factor in choice of plan. In three of these plans, (1) where the wife has all for life, (2) where the wife has all outright, and (3) where the wife has half outright and half for life, all the income will be taxed to her as a single taxpayer. Only in the last plan, half to wife and half to the sons, is the right to income split among several taxpayers, thus resulting in an over-all income tax reduction while widow and sons are alive. Of course, income tax savings could be worked out on top of the other distribution plans, for example, by a lease or a partnership between mother and sons during her life, thereby effecting an income split.

Continuing with the hypothetical example, it would be possible to reduce both income, estate and inheritance taxes further by means of planned gifts during life. During the lifetime of the husband and father, he could use the "split gift" provisions to transfer $72,000 worth of property to the sons in a single year free of tax. He would use his $30,000 exemption, his wife's $30,000 exemption and four $3,000 exclusions since the transfer is treated as half given by the husband and half by the wife. Thereafter $6,000 could be transferred to each son free of tax in each year.

Assuming that he made a gift of $72,000, representing an undivided share of the farm, two lines of tax savings appear. The over-all family income tax is reduced because the income from the sons' share of the property is taxed to them. Presumably if the major asset was a farm and the sons received an interest in it by gift, father and sons would have formed a partnership to operate it, spreading the income according to the land now owned by each and the amount of labor, machinery, livestock, etc. each contributed.

Beyond that, consider the results at death. The farm owner would have an estate of $128,000 at death, if he had given away $72,000. If he left half or more than half outright to his wife, the federal estate tax would amount to no more than $120. The tax would be zero if he had reduced his estate to $120,000 and qualified for the maximum marital deduction. The federal tax on the wife's death would range from $116 to $10,800, depending upon whether the husband left half or all to the wife. Iowa inheritance taxes at the husband's death would range from $180 to $2,670, on the wife's share and from $480 to $0 on the sons' share, again depending upon whether all went to the wife or part to wife and part to sons. Iowa taxes at the wife's death, when she left the property to the sons, would range from $480 if she received half the estate of her husband to $2,150 if she received all.

Thus if the farm owner with an estate of $200,000 had given $72,000 to his sons during life, and by will at death transferred half of the rest to his wife and half to his sons, and the wife left her estate to the sons, the federal estate tax burden at his death would have been $120 and at the wife's death $116. The Iowa inheritance tax cost at his death would have been $658 and at her death $476. Thus considered planning, using the split gift, the marital deduction and full Iowa exemptions, results in a total tax on both deaths of $1,370. In a prior example, seeking similar objectives, the same taxes on the same property amounted to $42,738. The $1,370 tax could be reduced further by additional lifetime gifts to the sons by husband and wife. In fact, a sound plan would provide for re-examination after the husband's death to determine how the wife should handle the property thereafter, and whether she should then make gifts.

The foregoing are mere examples. In an actual situation the figures will vary somewhat because technical details have been disregarded for purposes of illustration. The examples consider only the tax aspects without reference to the advisability of the distribution from the standpoint of the farm and the family. It is hardly necessary to say that a good plan must find the balance between the desires of the farm owner and possible tax savings.

EFFECT OF INCOME TAXES ON PLANNING

Estate and inheritance taxes fall once in each lifetime, and the gift tax only in years when gifts are made, but the income tax is an annual affair. So it is important to include in any plan an analysis of the effect of the income tax upon the family unit during the lives of all parties and upon spouse, children and heirs after the farm owner's death. While detailed consideration of the income tax aspects of planning farm distributions is beyond the scope of this bulletin, the following illustrations will point up the importance of an income tax analysis. Sometimes income tax considerations fall into line with other tax-saving devices, sometimes they are in conflict with them.

One of the common ways to save family income taxes is to spread income among the family members. This principle goes hand in hand with the use of lifetime gifts to save estate and inheritance taxes. Since income from property is generally taxed to the owner of the property, distributing farm property among the family members serves to spread the income and the burden of the income tax. For example, if a family farm operation produced around $10.000 of taxable income, and fell into the 42 percent income tax bracket, 42 cents of each dollar between $10,000 and $12,000 would go into federal income taxes. If that income really belonged to several members of the family, the portion of each of those dollars going to pay taxes could be cut to 25 cents or even less. Some of the splitting is already done for the taxpayer by the joint return provisions and the new special rate for a "head of a household,[134] but it is still advisable to examine the family situation to see if unnecessary taxes are paid because income is piled in one person's hands rather than being shared by several persons. Too, if income is properly shared, exemptions and deductions are available to members of the group that may not be available to one person, which leads to a lower over-all tax burden. Similar principles apply to Iowa income taxes.

[134] Internal revenue code §12 (c), for 1952 and thereafter.

Improper allocation of income or sham schemes to "split" income inevitably lead to trouble with the tax authorities. Such things are wrong and costly. However, where there is a real distribution of the ownership of property among family members or real contribution of labor, money or property to the farm operation, the income may be fairly allocated to each person according to his ownership or contribution. The 1951 federal law on family partnership arrangements has alleviated some of the problems in this area and should encourage the creation of family farm partnerships.[135]

Another very important income tax factor may be in conflict with estate and inheritance tax savings that result from gifts of property during life. This concerns the method of determining gain on the sale of property. Whenever property is sold, the gain is measured by the difference between the amount received for the property from the buyer and the tax "basis" of the seller.[136] In the usual case the so-called"basis" is the taxpayer's cost of the property less the depreciation.[137] But when property is obtained from someone else without payment for it, a different basis is used.

When property is received as a lifetime gift, the donee takes as the basis of the property the original cost of the property to the donor less the depreciation in the hands of the donor and the donee.[138] Assume that a father bought a farm for $20,000 when the market was low, and gave it to his son when it was worth $40,000.[139] If the son later sold the farm for $60,000, his income tax gain would be the difference between the father's cost less all depreciation and the $60,000. If the father had taken $2,000 depreciation on the buildings while he owned the farm and the son had taken $3,000 depreciation while he owned it, the basis of the farm would be $15,000 ($20,000 cost minus $5,000 depreciation). The gain on the sale would be $45,000 ($60,000 sale price minus $15,000 basis). If the capital gains tax applied, as it probably would here, the income tax would be $11,700. If the property so transferred was not entitled to capital gain treatment, the gain would be taxed at ordinary income tax rates.

Compare the situation in which the father did not make a gift during his life, but left the farm to the son by will at his death. Assume that the farm was worth $60,000 when

[135] Internal revenue code §191.

[136] Internal revenue code §111.

[137] Internal revenue code §113(a), 113(b) (1). Iowa income tax rules and regulations. #8, Art. 62.

[138] Internal revenue code §113(a) (2), 113(b) (1). Iowa income tax rules and regulations #8, Art. 97.

[139] Note that the value for gift tax is $40,000—fair market value at the time of the gift.

the father died and that the son sold it for $60,000. There would be little or no income tax. The tax basis for figuring gain on the sale of property received by will or inheritance is the fair market value of the property at the date of death.[140] Thus, the son computes the gain at $0 ($60,000 sale price minus $60,000 basis). If the son had used the property for awhile and had taken depreciation of $3,000, the basis would be $57,000 ($60,000 value at death minus $3,000 depreciation). If he then sold the farm the gain would be $3,000 ($60,000 sale price minus $57,000 basis).

Thus in a period of rising values, income tax considerations tend to offset gift tax savings, and may lead to a decision that property should be passed through the estate rather than through gifts during life. In this example the father's estate for estate tax purposes would have to be about $130,000 or more before the estate tax would offset the capital gains tax on the sale of the farm if it had been given during life. If the marital deduction was used, the estate could be much greater before the estate tax would offset the income tax. Under the Iowa inheritance tax, much depends upon the particular exemptions and rates. However, in this example the estate would have to be over $200,000 to offset the income tax.

The income tax has important effects even though no sale of the property is contemplated. The tax basis not only fixes the gain on a sale, but also determines the amount of depreciation allowed. This is of vital importance to each year's income tax return. In the first example above where the father gave away during his life a farm that had cost him $20,000, if $10,000 was the cost of the buildings, that is the total amount allowable for depreciation. The father would take depreciation while he owned the property and the son while he owned it, but the total depreciation on the original buildings could not exceed $10,000. This is true even though the value of the farm went way up. Depreciation is figured on basis. The father's basis was his original cost. The son, when he received the property by gift, took over the father's remaining basis and that was all he had to depreciate.

On the other hand, when property is acquired at death, the basis is the fair market value at the time of death. In the example above, where the farm was transferred by will and was worth $60,000 at the death of the father, the son would have a tax basis of $60,000. If the buildings were valued at $30,000, the son could depreciate the entire $30,000 over the life of the buildings. Since depreciation is a deduction against ordinary income over a period of years, a substantial estate

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[140] Internal revenue code §113(a) (5). Iowa income tax rules and regulations #8, Art. 95.

or inheritance tax saving is necessary to offset the loss of a higher depreciation deduction.

In one instance the income tax teams up with the estate and inheritance tax to double the taxpayer's troubles. The joint tenancy is something of a tax orphan. The entire value of the jointly held property is included in the gross estate of the first tenant to die.[141] Estate and inheritance taxes fall upon the value at death. But for income tax purposes the surviving tenant is considered to have received all rights by gift during life, so that for later sale or for depreciation, the surviving tenant's basis is the original purchase price less depreciation. For example, suppose a husband bought property for $20,000 taking the title in joint tenancy with his wife.[142] If he died when the property was worth $60,000, the entire amount would be in his gross estate subject to estate and inheritance taxes. Yet the widow's income tax basis for sale and for figuring depreciation is only $20,000 minus depreciation during the life of the husband. If the depreciation had been $3,000, the basis would be $17,000 ($20,000 cost minus $3,000 depreciation). If the widow sold the farm for its current value, $60,000, her gain would be $43,000 and her capital gains tax would be just over $11,000. If she kept the farm, the total depreciation deductions over the years would be limited to the original cost of the buildings, even though the value should go up.

Property passing at death gets a new basis, while property passing by gift has the same basis as it did in the hands of the donor. The difference in basis affects both federal and Iowa income taxes. Depreciation is equally important to both taxes. Subsequent sale is more important under federal law since it taxes the income from the sale of ordinary property and capital gains property, while the Iowa tax falls upon income from the sale of ordinary property but not from the sale of capital gains property.[143]

Even if there is no possibility of an estate or inheritance tax falling due because there is not enough property to be taxed, the income tax basis should be considered. When property is transferred at death and is given the highest reasonable value, a subsequent income tax advantage accrues to the recipient of the property from a high basis for sale and depreciation.

This discussion has been in terms of property that has risen in value. It must be understood that where property

[141] Unless it can be shown that someone else provided all or part of the purchase price. Internal revenue code §811 (e). Code of Iowa (1950) §450.3.

[142] He has made a gift of $10,000 to his wife. U. S. Treas. Reg. 108, §81.6.

[143] Code of Iowa (1950) §422.8(a). Note that property entitled to federal capital gains treatment may not qualify for Iowa exemption.

has gone down in value, or where the value has remained relatively stable, the income tax effects are important, but the planner will often reach different results and conclusions. Of course, no general rules apply; each farm plan must be studied as a distinct and separate entity to decide how the income tax reacts with the gift, estate and inheritance tax for the particular farm and farm family.

These are some of the highlights of tax law and some of the tax-saving principles that might be considered in any farm distribution plan. Tax saving alone can never be the basis of a good plan. It will always be necessary to weigh very carefully the human desires and family needs against taxes saved. It may be that a plan that saves taxes does not accomplish the farm owner's real desires. A sound plan must harmonize all of these. No farm distribution plan should be worked out without the aid of a good tax adviser, and every plan should be re-examined periodically in the light of changes in the tax laws.

DEVELOPING PLANS FOR THE TRANSFER OF FARM PROPERTY

SOME ELEMENTS OF PLANNING

No effort has been made in the general discussion of planning problems to separate land from other property necessary in a "going concern" farm. However, farm transfer planning must recognize that personal property of considerable value is involved in any arrangement worked out by parents and children. The land, however, is the major factor, and its distribution should be determined first. Then, other property will usually fall into the plan without great difficulty, and supplemental arrangements can provide for its distribution.

No sound plan can be worked out without very careful analysis of the farm property, the family needs, the family desires, the future of the farm, and the abilities of the younger generation. The legal problems and tax problems are often difficult, requiring much study. Farm people have always realized the importance of planning farm operations, but only recently have they considered the importance of planning the future distribution of the operating farm.

Every situation is a distinct problem which should be discussed in detail with a lawyer. Let him call in the banker, the insurance man and other specialists, if necessary, so that the best possible plan can be worked out to reach these results:

(1) Lifetime security for the surviving wife,

(2) Retention of the farm as an economic operating unit for the family and the community,

(3) Fair and equitable treatment of all children and heirs,

(4) All to be achieved at the lowest cost (taxes, probate, estate fees) to insure that the next generation receives as much as possible of the parents' estate.

SOME RULES TO CONSIDER

Growing out of studies and discussions with farm parents, their children and their lawyers, are 13 general rules which will prove helpful in working out farm property transfer problems within a family. Obviously each family has different problems to be worked out. Therefore, no one set of rules may be expected to apply equally well to all problems. Each family will need to adapt the rules to fit its own particular situation and objectives. Keeping these qualifications in mind, the following rules should help farm parents and their children in planning for the distribution of farm property within the family.

1. *Study possible arrangements.* Study carefully various arrangements for carrying out specific objectives in light of particular situations. Some of these are discussed in this bulletin.

2. *Discuss plans with family.* Get members of the family together and discuss with them the arrangements you make so each member will know what to expect and what to plan for. Unfortunately, many families are reluctant to discuss farm property transfer arrangements. But in most instances this reluctance can and should be overcome in the best interests of the entire family. The primary responsibility probably rests on the father to initiate plans and discussions. However, the mother shares the responsibility of planning the descent of farm property for the benefit of herself and the children.

3. *Protect parents.* In arranging for the transfer of farm property to children, parents should make sure that both of them or the survivor will have a comfortable home and sufficient income for their remaining years.

4. *Safeguard remaining child.* Provisions should be made to insure the son or daughter remaining on the home farm full compensation for improvements made on the farm and in the home.

5. *Provide equitable treatment.* Planning should provide for equitable rather than equal treatment of children.

Because of special contributions of certain children to the parents or farm, they should receive a proportionately larger share of the farm property. Because of special contributions of parents to certain children, the share of property might be reduced proportionately. In instances where some child or children have contributed more to the parents or farm than other children, or where parents have already contributed more to some child or children than others, it is well to remember that an equitable share is seldom an equal share or that an equal share is seldom an equitable share.

6. *Avoid excessive debts.* Farm property transfer arrangements should avoid saddling the child or children taking over the home farm with excessive debts incurred in paying off other heirs. This problem is particularly serious when estates are settled during a period of high land prices.

7. *Maintain a going concern.* Try to preserve the home farm as a productive unit and going concern. Provide for continuity in farm operations in bridging the gap between generations. Too often, estate settlement dispersal sales or farm segmentation breaks up the farm and the livestock herds, poultry flocks and farming systems that have been built up over many years.

8. *Build transfer foundations.* Build the father and son farm operating agreement upon sound farm property transfer foundations. The most satisfactory father and son farm operating agreement may end disastrously with the death of the father unless farm property transfer arrangements have been worked out considering the interests of the mother, the son and other members of the family.

9. *Insure liquidity at death.* The settlement of an estate requires some free cash. Debts must be paid. Taxes are due. There will be probate and other expenses. If cash or readily salable assets are not available, other property may have to be sold, perhaps at a loss. Sometimes a farm is lost to the family members because no other property was available. The distribution plan must include an estimate of the cash that will be available without interfering with the operating needs of the farm. Life insurance is a good way to provide a cash reserve fund at death.

10. *Obtain competent advice.* The local banker, the insurance man, the farm appraiser, the farm management specialist and other experts are available to the farm owner. It is important to obtain expert advice on important phases of the distribution plan.

11. *Keep plans up to date.* Farm property changes in value. Family composition also changes over the years, as do the laws, and particularly the tax laws. Therefore, property transfer plans should be examined from time to time to keep them up to date with changing conditions.

12. Understand the results of not planning. Farm owners should be sure that they know the results that will follow from failure to work out a farm transfer plan. Absence of a plan will affect the family, the tax burden and the method of transfer of the estate. These things should be realized by every farm owner.

13. Consult a lawyer. The Iowa law of descent and distribution of farm property has been outlined as part of this bulletin. This outline indicates how the family property will be distributed if the parents make no plans for distributing their property. It also outlines some of the legal and tax framework within which people may work out transfer plans designed to achieve the objectives they may have in mind. Although these general outlines of the law may be helpful, they are no substitute for legal advice on particular problems. Each individual situation varies with family composition, kind and value of property and objectives to be achieved. This necessitates variation, exception or qualification in the legal means which may be used. For these reasons, it is important to discuss plans with a lawyer and have him put the ideas into appropriate legal form.

FROM PLANS TO ACTION

Satisfactory farm property transfers are subject to the many human emotions and sentiments that attach themselves to family relationships. Families may not like to make plans in anticipation of death. Prospective heirs may be reluctant to raise questions of estate planning with their parents. In addition, farm parents may not be familiar with the opportunities that are available to them.

For these reasons farm owners are inclined to delay plans for the distribution of their farm property. But today's swift-moving events demand that farm property arrangements—the institutional basis of American agriculture— be kept sound and continuous. This, in turn, requires farm families to give serious study to farm transfer arrangements to fit their particular objectives and situations. This study should be followed by prompt and effective plans and action for carrying out these family decisions. This action is demanded for the future well-being of the family, the community and the farm.

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APPENDIX A

SELECTED PROVISIONS OF IOWA LAW RELATING TO WILLS

633.1. *Disposal of property by will.* Any person of full age and sound mind may dispose by will of all his property, subject to the rights of homestead and exemption created by law, and the distributive share in his estate given by law to the surviving spouse, except sufficient to pay his debts and expenses of administration.

633.5. *Verbal wills.* Personal property to the value of three hundred dollars may be bequeathed by a verbal will witnessed by two competent persons, but if such bequest is of greater value, it shall be valid only to that extent.

633.6. *Soldier or mariner.* A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed.

633.7. *Formal execution.* All other wills, to be valid, must be in writing, signed by the testator, or by some person in his presence and by his express direction writing his name thereto, and witnessed by two competent persons.

633.10. *Revocation-cancellation.* Wills can only be revoked in whole or in part by being canceled or destroyed by the act or direction of the testator, with the intention of so revoking them, or by the execution of subsequent wills. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will.

633.13. *After-born children.* Whenever a testator shall have a legitimate child born after the making of a last will, either in the lifetime or after the death of such testator, and shall die leaving such child so after-born unprovided for by any settlement, and neither provided for nor mentioned in such will, every such child shall succeed to and inherit the same interest in such parent's real and personal estate as though no will had been made, and the said interest shall be taken ratably from the interests of heirs, devisees, and legatees.

633.17. *Custodian—filing—penalty.* Any person having the custody of a will shall, as soon as he is informed of the death of the testator, file the same with the clerk. Any person who fails to produce the same after receiving reasonable notice so to do may be committed to jail until he does, and shall be liable for all damages occasioned by his failure.

635.51. *Procedure prescribed by will.* When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered, may exempt the executor from the necessity of giving bond, and prescribe the manner in which his affairs shall be conducted until his estate is finally settled, or until his minor children become of age.

APPENDIX B

SELECTED PROVISIONS OF IOWA LAW RELATING TO DESCENT OF PROPERTY

636.1. *Personal property.* The personal property of the deceased not necessary for the payment of debts, nor otherwise disposed of, shall be distributed to the same persons and in the same proportions as though it were real estate.

636.5. *Dower.* One-third in value of all the legal or equitable estates in real property possessed by the husband at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the wife had made no relinquishment of her right, shall be set apart as her property in fee simple, if she survives him. The same share of the real estate of a deceased wife shall be set apart to the surviving husband.

636.6. *Coextensive right of husband.* All provisions made in this chapter in regard to the widow of a deceased husband shall be applicable to the surviving husband of a deceased wife.

636.21. *Dower right unaffected by will.* The survivor's share cannot be affected by any will of the spouse unless consent thereto is given as hereinafter provided.

636.31. *Descent to children.* Subject to the rights and charges hereinbefore provided, the remaining estate of which the decedent died seized shall, in the absence of a will, descend in equal shares to his children, unless one or more of them is dead, in which case the heirs of such shall inherit his or her share in accordance with the rules herein prescribed, in the same manner as though such child had outlived its parents.

636.32. *Absence of issue.* If the intestate leaves no issue, the whole of the estate to the amount of fifteen thousand dollars, after the payment of the debts and expenses of administration, and one-half of all of the estate in excess of said fifteen thousand dollars shall go to the surviving spouse and the other one-half of said excess shall go to the parents. If no spouse, the whole shall go to the parents. In case of an adopted child, the parents by adoption shall inherit as if they were the natural parents.

636.39. *Surviving parent.* If one of the parents is dead, the portion which would have gone to such deceased parent shall go to the survivor, including the portion which would have belonged to the intestate's spouse, had one been living.

636.40. *Heirs of parents.* If both parents are dead, the portion which would have fallen to their share by the above rules shall be disposed of in the same manner as if they had outlived the intestate and died in the possession and ownership of the portion thus falling to their share, and so on, through ascending ancestors and their issue.

636.41. *Spouse and heirs.* If heirs are not thus found, the portion uninherited shall go to the spouse of the intestate, or the heirs of such spouse if dead, according to like rules, and if such intestate has had more than one spouse who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all, if all are dead, such heirs taking by right of representation.

636.44. *Advancements.* Property given by an intestate by way of advancement to an heir, for the purpose of the division and distribution thereof shall be considered part of the estate, and be taken by him toward his share of the estate at what it would be worth if in the condition in which it was given to him, but if such advancement exceeds the amount to which he would be entitled, he cannot be required to refund any portion thereof.

636.50. *Escheat.* If there is property remaining uninherited, it shall escheat to the state.